# Legislative History of the Civil Rights Commission

## Table of Contents

V. News Articles

## I. Committee Reports

## A. House Report 103-775: Civil Rights Commission Amendments of 1994

Committee Reports

103d Congress, 2nd Session

House Rept. 103-775

*103 H. Rpt. 775*

CIVIL RIGHTS COMMISSION AMENDMENTS OF 1994

DATE: October 3, 1994. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

SPONSOR: Mr. Brooks, from the Committee on the Judiciary, submitted the following

REPORT

(To accompany H.R. 4999)

(Including cost estimate of the Congressional Budget Office)

TEXT:

The Committee on the Judiciary, to whom was referred the bill (H.R. 4999) to amend the United States Commission on Civil Rights Act of 1983, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE. This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

SEC. 2. AMENDMENT OF 1983 ACT. That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. SHORT TITLE. "This Act may be cited as the ivil Rights Commission Act of 1983.

"SEC. 2. ESTABLISHMENT OF COMMISSION. "(a) Generally. There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the ommission).

"(b) Membership. The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms. The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson. (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commissions members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

"(3) The President shall, with the concurrence of a majority of the Commissions members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) Removal of Members. The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) Quorum. 5 members of the Commissio n constitute a quorum of the Commission.

"SEC. 3. DUTIES OF THE COMMISSION. "(a) Generally. The Commission

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;of the right of citizens of the United States to vote and have votes counted; and

"(2) shall

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) Limitations on Investigatory Duties. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) Reports.

"(1) Annual report. The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) Other reports generally. The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

"(d) Advisory Committees. The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

"(e) Hearings and Ancillary Matters.

"(1) Power to hold hearings. The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) Power to issue subpoenas. The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) Witness fees. A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) Depositions and interrogatories. The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) Limitation Relating to Abortion. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"SEC. 4. ADMINISTRATIVE PROVISIONS. "(a) Staff.

"(1) Director. There shall be a full-time staff director for the Commission who shall

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission.

"(2) Other personnel. Within the limitation of its appropriations, the Commission may

"(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) Compensation of Members.

"(1) Generally. Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

"(2) Persons otherwise in government service. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such members usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) Voluntary or Uncompensated Personnel. The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) Rules.

"(1) Generally. The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) Continuation of old rules. Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) Cooperation. All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS. "There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

"SEC. 6. TERMINATION. "This Act shall terminate on September 30, 1995.".

Explanation of Amendment

Inasmuch as H.R. 4999 was reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

Summary and Purpose

The purpose H.R. 4999 is to reauthorize the United States Commission on Civil Rights for one year.

Hearings

The Subcommittee on Civil and Constitutional Rights held a hearing on February 9, 1994 to consider the need to reauthorize the United States Commission on Civil Rights (the Commission). Presenting testimony in support of the Commissions request for reauthorization was Dr. Mary Frances Berry, Chairperson of the Commission, accompanied by Commissioner Carl A. Anderson, and Stuart J. Ishimaru, Acting Staff Director.

Committee Action

On August 17, 1994, the Subcommittee on Civil and Constitutional Rights favorably ordered reported a committee print, which was subsequently introduced as H.R. 4999 on August 19, 1994, to reauthorize the Commission.

The Full Committee on the Judiciary considered H.R. 4999 on September 29, 1994, and by voice vote, a reporting quorum being present, ordered that it be favorably reported with an amendment to the full House.

Discussion

Background and Need for Legislation

The United States Commission was first established by the Civil Rights Act of 1957. It is the only bi-partisan, independent Federal fact-finding agency considering discrimination and the denial of equal protection of laws based on race, color, religion, sex, age, handicap, national origin or in the administration of justice.

Concerns about the Commissions independence in the early 1980s lead to compromise legislation "reconstituting" it in 1983.

H.R. 4999, as reported, more concisely rewrites the 1983 legislation. For example, it eliminates provisions of the 1983 Act regarding the conduct of Commission hearings. The provisions are unnecessary because the Commissions hearings are subject to the Sunshine in Government Act.

Since the Commission has no enforcement authority, the force of its work has come from its scholarly reports. The Committee expects that the modest increase in appropriations authorized by this bill will enhance the Commissions ability to return to its fact-finding mandate.

Section-by-Section Analysis

Following is a section-by-section analysis of the Civil Rights Commission Amendments Act of 1994.

Section 1. Short Title

This section establishes that the Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

Section 2. Amendment of 1983 Act

This section establishes that all after the enacting clause of the United States Commission on Civil Rights Act of 1983 is amended.

"Section 1. Short Title

This section refers to the title of the Act being amended, the "Civil Rights Commission Act of 1983".

"Section 2. Establishment of Commission

This section establishes the United States Commission on Civil Rights. It sets out the particulars with respect to the membership, method of selection, and terms of the members of the Commission.

The section sets forth the method for designating the Chairperson, and the Vice Chairperson. It also sets forth the grounds for removal of members of the Commission and establishes the number of members constituting a quorum.

"Section 3. Duties of the Commission

This section restates the Commissions longstanding factfinding duties with respect to discrimination and denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin or in the administration of justice. The Commission is granted new authority to prepare public service announcements and advertising campaigns to discourage discrimination.

The section states that Commission shall issue reports to the President and Congress.

Provision is also made for the establishment of State Advisory Committees.

The Commission is authorized to conduct hearings, issue subpoenas, and provide for witness fees. It may also utilize depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"section 4. administrative provisions

This section provides for the staff of the Commission including the appointment of the staff director. It authorizes the compensation of members of the Commission, and prohibits the Commission from accepting or using the services of voluntary or uncompensated persons including the commissioners.

The Commission is authorized to makes rules necessary to carry out the purposes of the act.

Federal agencies shall cooperate fully with the Commission.

"section 5. authorization of appropriations

The section authorizes an appropriation of $9,500,000 for fiscal year 1995 and prohibits the use of those funds to create additional regional offices.

"section 6. termination

The section provides that the act terminates on September 30, 1995."

Committee Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Committee on Government Operations Oversight Findings

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority of increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 4999, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 30, 1994.
Hon. Jack Brooks,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4999, the Civil Rights Commission Amendments Act of 1994.

Enactment of H.R. 4999 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer.

Enclosure.

congressional budget office cost estimate

1. Bill number: H.R. 4999.

2. Bill title: Civil Rights Commission Amendments Act of 1994.

3. Bill status: As ordered reported by the House Committee on the Judiciary on September 29, 1994.

4. Bill purpose: H.R. 4999 would reauthorize the United States Commission on Civil Rights for the fiscal year 1995 and would authorize appropriations of $9.5 million for that fiscal year. In addition, the bill would make several minor changes to the current laws regarding the commission.

5. Estimated cost to the Federal Government:

-- (PLEASE REFER TO ORIGINAL SOURCE FOR TABLE) --

The costs of this bill fall within budget function 750.

Basis of estimate: The estimate assumes that the Congress will appropriate the full amount authorized, which would represent an increase of $0.5 million over the current 1995 appropriation of $9.0 million. The outlay estimate is based on the commissions historical spending rate.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimated comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mark Grabowicz.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4999 will have no significant inflationary impact on prices and costs in the national economy.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983

AN ACT To amend the Civil Rights Act of 1957 to extend the life of the Civil Rights Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States Commission on Civil Rights Act of 1983".

establishment of commission

Sec. 2. (a) There is established a Commission on Civil Rights (hereafter in this Act referred to as the "Commission").

(b)(1) The Commission shall be composed of eight members. Not more than four of the members shall at any one time be of the same political party. Members of the Commission shall be appointed as follows:

(A) four members of the Commission shall be appointed by the President;

(B) two members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party; and

(C) two members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party.

(2) The term of office of each member of the Commission shall be six years; except that (A) members first taking office shall serve as designated by the President, subject to the provisions of paragraph (3), for terms of three years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed.

(3) The President shall designate terms of members first appointed under paragraph (2) so that two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of three years and two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of six years. No more than two persons of the same political party shall be designated for three year terms.

(c) The President shall designate a Chairperson and a Vice Chairperson from among the Commissions members with the concurrence of a majority of the Commissions members. The Vice Chairperson shall act in the place and stead of the Chairperson in the absence of the Chairperson.

(d) The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(e) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation as the original appointment was made.

(f) Five members of the Commission shall constitute a quorum.rules of procedure of the commission hearings

Sec. 3. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairperson, or one designated by him to act as Chairperson at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commissions rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commissions rules at the time of service of the subpena.

(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

(d) The Chairperson or Acting Chairperson may punish breaches of order and decorum by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the persons reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commissions power to except from the answer such matter as it determines has been inserted scandalously, prejudiciously or unnecessarily.

(f) Except as provided in this section and section 6(f) of this Act, the Chairperson shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in executive session may for good cause be limited to inspection of the official transcript of his

testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

(j) A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(l) The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organizations including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined; and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published.

(m) The provisions of subchapter II of chapter 5 of title 5 of the United States Code, relating to administrative procedure and freedom of information, shall, to the extent not inconsistent with this section, apply to the Commission established under this Act.

compensation of members of the commission

Sec. 4. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5 of the United States Code.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with subchapter I of chapter 57 of title 5 of the United States Code.

duties of the commission

Sec. 5. (a) The Commission shall

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age, handicap, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or the administration of justice;

(4) serve as national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice; and

(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of the Presidential electors, Members of the United States Senate, or the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

(b) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization.

(c) The Commission shall submit reports to the Congress and the President at such times as the Commission, the Congress or the President shall deem desirable.

(d) As used in this section, the term "handicap" means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6)).

(e) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.

(f) The Commission shall appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are members of eastern- and southern-European ethnic groups and shall report its findings to the Congress. Such reports shall include an analysis of the adverse consequences of affirmative action programs encouraged by the Federal Government upon the equal opportunity rights of these Americans.

The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.

powers of the commission

Sec. 6. (a)(1) There shall be a full-time staff director for the Commission who shall be appointed by the President with the concurrence of a majority of the Commission.

(2)(A) Effective November 29, 1983, or on the date of enactment of this Act, whichever occurs first, all employees (other than the staff director and the members of the Commission) of the Commission on Civil Rights are transferred to the Commission established by section 2(a) of this Act.

(B) Upon application of any individual (other than the staff director or a member of the Commission) who was an employee of the Commission on Civil Rights established by the Civil Rights Act of 1957 on September 30, 1983, the Commission shall appoint such individual to a position the duties and responsibilities of which and the rate of pay for which, are the same as the duties, responsibilities and rate of pay of the position held by such employee on September 30, 1983.

(C)(i) Notwithstanding any other provision of law, employees transferred to the Commission under subparagraph (A) shall retain all rights and benefits to which they were entitled or for which they were eligible immediately prior to their transfer to the Commission.

(ii) Notwithstanding any other provision of law, the Commission shall be bound by those provisions of title 5, United States Code, to which the Commission on Civil Rights, established by the Civil Rights Act of 1957, was bound.

(3) Within the limitation of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in subsection (g) of section 3 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States as it deems advisable, but the Commission shall constitute at least one advisory committee within each State composed of citizens of that State. The Commission may consult with governors, attorneys general, and other representatives of State and local governments and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 203, 205, 207, 208, and 209 of title 18 of the United States Code.

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this resolution, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 3 (j) and (k) of this Act, over the signature of the Chairperson of the Commission or of such subcommittee, and may be served by any person designated by such Chairperson. The holding of hearings by the Commission, or the appointment of a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of five members is present.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give

testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(h) Without limiting the application of any other provision of this Act, each member of the Commission shall have the power and authority to administer oaths or take statements of witnesses under affirmation.

(i)(1) The Commission shall have the power to make such rules and regulations as are necessary to carry out the purposes of this Act.

(2) To the extent not inconsistent with the provisions of this Act, the Commission established by section 2(a) of this Act shall be bound by all rules issued by the Civil Rights Commission established by the Civil Rights Act of 1957 which were in effect on September 30, 1983, until modified by the Commission in accordance with applicable law.

(3) The Commission shall make arrangements for the transfer of all files, records, and balances of appropriations of the Commission on Civil Rights as established by the Civil Rights Act of 1957 to the Commission established by this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office. There are authorized to be appropriated to carry out this Act $7,422,014 for fiscal year 1993, and an additional $850,000 for fiscal year 1993 to relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.

termination

Sec. 8. The provisions of this Act shall terminate on September 30, 1994.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Act of 1983".

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) Generally. There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the "Commission").

(b) Membership. The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

(1) 4 members of the Commission shall be appointed by the President.

(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(c) Terms. The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

(d) Chairperson. (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

(2) Thereafter the President may, with the concurrence of a majority of the Commissions members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

(3) The President shall, with the concurrence of a majority of the Commissions members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

(e) Removal of Members. The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(f) Quorum. 5 members of the Commission constitute a quorum of the Commission.

SEC. 3. DUTIES OF THE COMMISSION.

(a) Generally. The Commission

(1) shall investigate allegations in writing under oath or affirmation relating to deprivations

(A) because of color, race, religion, sex, age, disability, or national origin; or

(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

(2) shall

(A) study and collect information relating to;

(B) make appraisals of the laws and policies of the Federal Government with respect to;

(C) serve as a national clearinghouse for information relating to; and

(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

(b) Limitations on Investigatory Duties. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

(c) Reports.

(1) Annual report. The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

(2) Other reports generally. The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

(d) Advisory Committees. The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

(e) Hearings and Ancillary Matters.

(1) Power to hold hearings. The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

(2) Power to issue subpoenas. The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Witness fees. A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) Depositions and interrogatories. The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

(f) Limitation Relating to Abortion. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) Staff.

(1) Director. There shall be a full-time staff director for the Commission who shall

(A) serve as the administrative head of the Commission; and

(B) be appointed by the President with the concurrence of a majority of the Commission.

(2) Other personnel. Within the limitation of its appropriations, the Commission may

(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(b) Compensation of Members.

(1) Generally. Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

(2) Persons otherwise in government service. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such members usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

(c) Voluntary or Uncompensated Personnel. The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

(d) Rules.

(1) Generally. The Commission may make such rules as are necessary to carry out the purposes of this Act.

(2) Continuation of old rules. Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

(e) Cooperation. All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

SEC. 6. TERMINATION.

This Act shall terminate on September 30, 1995.

## B. House Report 104-846: Civil Rights Commission Act of 1996

Committee Reports

104th Congress; 2nd Session

House Rpt. 104-846

*104 H. Rpt. 846*

CIVIL RIGHTS COMMISSION ACT OF 1996

DATE: September 26, 1996. Ordered to be printed

SPONSOR: Mr. Canady of Florida submitted the following Report

COMMITTEE: from the Committee on the Judiciary

(To accompany H.R. 3874)

(Including cost estimate of the Congressional Budget Office)

TEXT:

The Committee on the Judiciary, to whom was referred the bill (H.R. 3874) to reauthorize the United States Commission on Civil Rights, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (which are technical in nature) are as follows:

Page 1, line 9, strike "1986" and insert "1983".

Page 3, line 3, strike " "agency" " and insert " gency ".

Purpose and Summary

The United States Commission on Civil Rights was originally established in 1957 as a temporary agency designed to serve as an independent, bipartisan, fact-finding agency of the executive branch. As currently constituted, the Commission has eight members: four appointed by the President, two appointed by the Senate and two appointed by the House. 42 U.S.C. 1975 et seq. The Commissions current authorization expires on September 30, 1996.

H.R. 3874, the "Civil Rights Commission Act of 1996," extends the authorization of the U.S. Commission on Civil Rights for one year and authorizes funding at $8.75 million. In response to issues raised as a result of oversight conducted by the Subcommittee on the Constitution, the legislation also makes needed changes to the Commissions authorization statute. The legislation proposes two minor changes to the Commissions authorization statute to inject accountability into its proceedings: (i) It requires a vote of a majority of the Commissioners, a quorum being present, to issue subpoenas; and (ii) allows a majority of the Commissioners to vote to remove the Staff Director.

Background and Need for the Legislation

In October 1995, after receiving numerous allegations of mismanagement and waste and pursuant to its oversight authority, the Subcommittee on the Constitution requested information and documents from the Commission relating to its program management, personnel practices, and procurement.

While some of the requested information was provided, many of the requests were unanswered or only responded to in part. Subsequently, the Chairman requested that the General Accounting Office investigate the Commissions program, personnel and procurement practices. In addition, the Office of Personnel Management was asked to conduct a thorough Personnel Management Evaluation. Both of these investigations are ongoing.

Also in October 1995, the Subcommittee held an oversight hearing to investigate reports of disturbing activities at the Commission. The Commission had failed to comply with the statutory requirement that it submit to Congress at least one report each fiscal year that monitors federal civil rights enforcement (for fiscal year 1995), even though it had received an additional $1.2 million in funding; three Commissioners were not given a proper opportunity to vote on a Commission report entitled "Funding Federal Civil Rights Enforcement" in June of 1995; and perhaps of greatest concern, the Commission used its subpoena authority in a manner that "chilled" the First Amendment-protected activities of individuals in connection with hearings conducted in Miami, Florida in September 1995.

Subpoenas for the Miami Hearing

At its October 1995 oversight hearing, the Subcommittee on the Constitution investigated claims that the Commission used its subpoena power to force individuals engaged in legal and constitutionally-protected political activities to testify before the Commission and to submit copies of their organizations internal records at its September hearings in Miami, Florida. Once the Commissions activities were subject to the scrutiny of the press and calls for a Congressional investigation, it backed down.

As part of its continuing series of hearings on the issue of "Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination," on September 14 and 15, 1995,

the Commission held two days of hearings in Miami, Florida.51 In preparation for the hearings, Commission staff contacted potential witnesses including JoAnn Peart, a housewife who is President and Co-Founder of Floridians for Immigration Control; Robert Ross, President of the Florida-187 Committee; and Enos Schera, Vice-President of Citizens of Dade United.

51 Hearings were also held in Washington, D.C. (January and May, 1992), Chicago, Illinois (June, 1992), Los Angeles, California (June, 1993), and New York City, New York (September, 1994 and July, 1995).

These individuals, engaged in legitimate and constitutionally-protected political activities, were eventually served with subpoenas to compel attendance against their will, along with detailed requests for internal records and documents regarding their First Amendment-protected activities.

After having repeatedly been contacted by Commission Attorney Sicilia Chinn and informed that her attendance would be compelled by subpoena, if necessary, on August 25, 1995, Mrs. Peart wrote to Florida Congressman Mark Foley complaining that, "Since I am not an expert and have no firsthand information relating to the ostensible purpose of the Hearings, then I do not understand why I am being threatened by an employee of the federal government with forced attendance at the Miami Hearing." (Letter of JoAnn Peart, August 25, 1995).

On the same date, Congressman Foley wrote to Ms. Mary Mathews, Staff Director for the Commission, asking her to "respond to Mrs. Pearts specific comments" and to "specify the Commissions official policy in these circumstances." (Letter of Rep. Mark Foley, August 25, 1995) Ms. Mathews responded to Congressman Foley by letter dated August 30, 1995, but on September 2, the subpoenas directed to JoAnn Peart and Robert Ross were served by federal marshals.

Shortly after the subpoenas were served, there was an outcry in the press that the heavy-handed tactics of the Commission were chilling First Amendment rights.52

52 "Civil Rights Panel Subpoenas Anti-Immigration Leaders," Palm Beach Post, 9/7/95; "Racial Hearings Stir Up Speakers," Sun-Sentinel, 9/7/95; "Subpoena Tactics Draw Fire," Tampa Tribune, 9/7/95; "U.S. Panel Orders Anti-Immigration Leaders to Appear," AP wire story, 9/7/95; "Sparks Flying Over Civil Rights Subpoenas," The Herald, 9/8/95; "Illegal-immigrant foes get subpoenas" Washington Times, 9/11/95.

On September 8, 1995, the Commission held its monthly meeting at which time Commissioners Constance Horner, Carl Anderson and Robert George expressed concern over the scope of the subpoenas and their impact on First Amendment rights. In response to charges that Mrs. Peart, Mr. Ross and Mr. Schera were unfairly singled out, Chairperson Berry argued that the subpoenas were a "routine tool" needed to insure attendance by witnesses and that all witnesses within the 100 mile radius of the hearing were subpoenaed without regard to their point of view. With respect to the requests for internal documents of their organizations, Berry stated that the subpoena duces tecum issued to Ross was not unlike that issued to other witnesses with opposing viewpoints, such as

Orvaldo Soto, President of the Spanish American League Against Discrimination.53 She also noted that the subpoenas duces tecum did not explicitly ask for membership lists and, therefore, did not violate the First Amendment. Berry also asked the Commission staff to prepare a memo on the Commissions practices and policies related to the issuance of the subpoenas.

53 The subpoena duces tecum issued to Robert Ross asked for internal documents and "drafts" of the proposed constitutional amendment. The subpoena duces tecum to Orvaldo Soto only requests public materials no drafts or internal documents. Also, individuals who would be an excellent source for documents containing factual information to the Commission such as Dr. Max Castro, Professor of Sociology and Director of the North-South Centers Research Program on Immigration and Refugees at the University of Miami and Dr. Raymond Mohl, Chairman of the History Department at Florida Atlantic University (whose teaching and research fields include American Urban History, Race and Ethnicity, American Social History, Modern American History, Florida History, and Historiography) were not asked to bring any documents. In contrast, it is curious that a housewife with a discussion group on immigration-related issues is served with a subpoena to empty out her "files" on the activities of her group.

After the Chairman of the Subcommittee announced there would be a congressional oversight hearing on the matter and recipients of the subpoenas threatened to file a lawsuit, Berry wrote to Mrs. Peart, Mr. Ross and Mr. Schera informing them that if they chose not to attend, she would not enforce the subpoenas served them.

These actions have had the effect of chilling the lawful exercise of First Amendment rights by citizens. In addition, because of the nature of the topic, it has created the appearance that the powers of the Commission are being used to target individuals based on the content of their political advocacy.

With respect to its subpoena authority, the Commissions authorizing statute provides: The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides. * * * In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena. 42 U.S.C. 1975a(e)(2).

The ability of the Commission to use subpoenas to engage in fact-finding was upheld by the United States Supreme Court in Hannah v. Larche, 393 U.S. 420 (1960) and U.S. v. ONeill, 619 F.2d 222 (1980). In establishing that the Commission has the power to subpoena witnesses and documents, the ONeill court also explains that this power is limited by statute to that which is "pertinent, relevant and non-privileged." 619 F.2d 222, 224 (1980).

Of course, the subpoena authority must be exercised within the framework of constitutional guarantees. In NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958), the U.S. Supreme Court held that the state of Alabama could not compel the National Association for the Advancement of

Colored People (NAACP) to reveal to the states Attorney General the names and addresses of all of its Alabama members. The NAACP put forth evidence showing that compelled disclosure of its members on past occasions had subjected them to economic reprisal, loss of employment, threat of physical coercion, and general public hostility. In articulating the right protected, a unanimous Court declared:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. NAACP v. Alabama, 357 U.S. 449 (1958) (internal citations omitted.)

In a letter to Chairman Charles Canady dated September 18, 1995, Chairperson Berry stated, "(j)udicial supervision makes it impossible to hill any constitutionally-protected activity by subpoenaing a witness."

It is true that an individual whose rights are violated by a government agency can seek redress through the courts if that individual can afford the commitments of time and money to hire an attorney to match the resources of the federal government and if that individual does not fear further intimidation, humiliation and alienation. Having to go to court to protect yourself means that your freedom has already been "chilled." In addition, individuals who desire to express similar ideas or political views are less likely to speak up for fear they too may be visited by a federal marshal serving a subpoena.

Individuals should not be forced to suffer this burden in order to exercise rights granted by the Constitution. The burden is on the government agency, in the first instance, to abide by the Constitution and to insure that its actions do not infringe upon or chill constitutional rights.

Testimony received by the Subcommittee at its October 1995 hearing did little to comfort Members of Congress and the press that the Commissions subpoena authority was being exercised in a responsible fashion. At that hearing, Staff Director Mary Mathews and then Deputy General Counsel Stephanie Moore informed the Subcommittee about the Commissions current practice of issuing subpoenas. All witnesses within the 100-mile radius of proposed hearings are routinely subpoenaed. The Commissions staff determines who to subpoena and then the chair signs the subpoenas provided by the staff. Under current Commission procedures, the Commissioners agree to a project design and have an opportunity to suggest witnesses, however, they are excluded from the process of selecting witnesses and are not permitted to review or approve subpoenas and subpoenas duces tecum prior to such subpoenas being issued.

The Commission staff selects witnesses for the hearings and prepares subpoenas and subpoenas duces tecum as they see fit. Even where witnesses express reservations about being subpoenaed to provide testimony, those concerns are not passed on to the Chair who signs the subpoenas so that they can be served by U.S. Marshals. In this instance, for example, when Chairperson Berry wrote to Mrs. Peart and others informing them that she would not enforce the subpoenas against them, she indicated that she had learned of their concerns through "press accounts." Even more alarming, Staff Director Mathews testified before the Subcommittee that she did not inform the Chair that Congressman Foley had written to her expressing concern that his constituent was being harassed by Commission attorneys and felt her rights were being violated. Further testimony at the October hearing indicated that Commission staff had little awareness or concern for protecting basic constitutional rights. For example, Ms. Moore testified that, other than asking for membership lists, she could not think of any way in which issuing a subpoena could infringe First Amendment rights and that the issuance of subpoenas to individual citizens involved in political activities could not have a chilling impact on their First Amendment rights.54

54 See "U.S. Commission on Civil Rights," hearing before the Subcommittee on the Constitution, 104th Congress, 1st Session (October 19, 1995), 68.

Failure to submit a statutory report

The Commission failed to comply with the mandate in its authorizing statute which requires it to submit to Congress at least one report every fiscal year that monitors federal civil rights enforcement in the United States.

In Fiscal Year 1995, the Commission failed to comply with its statutory mandate which provides:

The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States. 42 U.S.C. 1975a.

When one considers that the Commission received a $1.2 million increase in FY 1995 over its prior year appropriation, failure to properly manage resources in a manner so that it can fulfill its statutory mandate also becomes a concern.

Commission staff prepared a report on enforcement of Title VI of the Civil Rights Act of 1964 which was to have fulfilled the statutory requirement. The report was voted on by the Commissioners at their regular monthly meeting on July 14, 1995, but as drafted failed to meet the approval of a majority of the Commissioners. Chairperson Berry announced that she was voting against the report so that she could bring it up for a revote at a later date and that she would:

(D)iscuss with the Staff Director the possibility of revising the Executive Summary and the findings and recommendations to reflect more clearly (items that are already in the report) . * * *

And then to present it to the Commission again with taking into account some of the other comments that have been made here, in September. But I do think with the great expenditure of money and time and effort, and the fact that we do not have another statutory report, and the importance of the subject that it is worth a try to get it approved.55

55 Unedited remarks of Commission Chair Mary Frances Berry, p. 121-122, Commission Transcript, Meeting of July 14, 1995.

Commissioner George then asked the Chair if it would be appropriate to submit memoranda through the Staff Director in order to make the requested changes. Berry responded, "What you should do is if you are moved to do so, you should give a memo to the Staff Director with your comments, and do it as soon as possible."56

56Id. at 125.

On August 15, 1995, four of the Commissioners (Anderson, George, Horner and Redenbaugh) sent a memorandum to Staff Director Mary Mathews discussing in detail issues that were raised during the Commissions meeting on July 14, 1995 and offering ways to resolve those issues.

On August 18, 1995, Chairperson Mary Frances Berry and Vice-Chairperson Cruz Reynoso responded to the memorandum, stating, "if the nature of this draft as an enforcement report were clearly understood by every Commissioner, we have no doubt it would garner the votes necessary for its approval." In sum, they thought it was unnecessary to make any changes. Mathews never responded to the August 15, 1995 memorandum from the four Commissioners.

At the Commissions monthly meeting on October 6, 1995 when Commissioner Horner raised the issue of the August 15, 1995 memorandum offering to work out changes to the Title VI report, she was informed by Berry and Mathews that it was the policy of the Commission that the Staff Director would not receive any memorandum purporting to be from Commissioners unless signed by the Commissioners themselves. Since the memorandum requesting changes to the report was not signed, it was not accepted.57

57 It is not clear why, if Mathews was in doubt about the source of the memo, she did not contact the Commissioners to verify its authenticity, especially when at the end of the July meeting, she was present when the Commissioners discussed the fact that they would be sending the memo. The origin of the policy on "signed" memos is also unclear. One could credibly argue that Mathews was under some obligation to try to work out the concerns of the Commissioners so that the Commission could comply with the mandate of its authorizing statute.

Berry also informed the Commissioners that they had reached an impasse because four Commissioners found the report perfectly acceptable and four did not. As far as she was concerned

there was "nothing to discuss." Finally, an agreement was reached whereby the Commissioners Staff Assistants were instructed to meet in order to attempt to resolve the impasse.

The report was finally approved by the Commissioners in January of 1996. The final published version was issued in August of this year almost a year after the deadline.

Unfortunately, it appears that this fiscal year the Commission will fail to comply with the mandate of its statute that it issue one report monitoring federal civil rights enforcement. Again this year, the staff of the Commission failed to provide an acceptable draft report to the Commissioners so that it can be approved and published prior to the end of the 1996 fiscal year.

Voting Irregularities

The Staff Director closed the voting on adopting a report without giving all the members of the Commission the opportunity to cast a vote.

By memorandum dated June 6, 1995, Staff Director Mathews sent to the Commissioners a draft report entitled, "Funding Federal Civil Rights Enforcement" and informed them that it was important to issue the report as soon as possible so as to "provide a meaningful contribution to the analytical process on the Hill." She also proposed that "a poll vote be taken for approval of this report at a time convenient to all Commissioners."58

58 As of the writing of this memo, this report has still not been transmitted to Congress.

On Friday, June 9, 1995, the Commission held its monthly meeting at which time Berry announced, "the hope is that you could read it and that we could take a poll vote at some point and if it seems not to be contentious that we could pass it and send it up because they will be marking up appropriations bills on the Hill before we meet again."59 It was agreed that there would be a telephone poll vote at a convenient time.

59 Monthly Meeting of the U.S. Commission on Civil Rights, June 9, 1995, 47-48.

On June 19, 1995, Commissioners Horner and Redenbaugh wrote to Berry, with the accord of Commissioners Anderson and George, informing her that:

"Because we have serious questions and reservations, we feel it is necessary to discuss this report among the Commissioners and with the staff authors before voting. We kindly request that you arrange for such an opportunity through the Office of the Staff Director."510

510 Memorandum, June 19, 1995.

On June 21, 1995, by memorandum, Mathews informed the Commissioners that a poll vote had been taken on the report which "resulted in approval of the report." Also by memorandum dated June 21, 1995, Mathews wrote to Berry informing her that the report had been approved by a vote of 4-1 with three Commissioners not voting.511 The memorandum stated that the poll was conducted "in accordance with Commission procedure" and that:

511 Voting in favor of the report were Berry, Cruz Reynoso, Charles Wang and Arthur Fletcher. Commissioner Horners written vote against approving the report was submitted to the Staff Director prior to the date of the vote. The votes of Commissioners Redenbaugh, Anderson and George were not recorded.

As in other instances, individual Commissioners expressed a desire for a delay or made other suggestions which would have prevented the polling from occurring (sic). However, the poll proceeded according to Commission policy that the Staff Director implements a Commission decision to poll unless prevented by lack of a quorum.512

512 Memorandum of Staff Director to Chairperson Mary Frances Berry, June 21, 1995.

By letter of June 23, 1995, Commissioners Anderson, George, Horner and Redenbaugh wrote to Chairman Canady asking that he not accept the report because "(t)he report in its current form was published prematurely and represents neither a majority nor a consensus of the Commission." In addition, the letter states:

If all Commissioners had voted, the report would not have passed in its current form. Staff Director Mary K. Mathews and Chairperson Mary Frances Berry were so advised in advance of the telephonic vote. In fact, * * * we were attempting to work with Chairperson Berry to draft a consensus document, and were in telephonic communications with the Office of the Staff Director even as the Staff Director arbitrarily stopped the vote. Moreover, the report was released so hastily that, in violation of normal procedures, Commissioners could not file dissenting opinions, thus denying Congress the differing views of half of this Commission.

By memorandum of June 27, 1995, Commissioner Redenbaugh reiterated the problem to Berry, Reynoso, Fletcher and Wang, stating:

On Tuesday afternoon, I stated to the Staff Director that if the commissioners were required to have our votes recorded on that date, Commissioner Anderson and I must have our votes recorded as "no." She indicated to me that it would be possible to have the vote held over until the next day, and I relied on that representation.

Staff Director Mathews continues to insist that the poll was taken in accordance with "standard commission procedure."

However, there are no specific Commission procedures which govern adoption of reports by notational voting, telephonic voting or poll voting which permits, directs or requires the Staff Director to implement a Commission decision to poll unless prevented by lack of a quorum, or requiring or authorizing telephone voting polls to be closed out in a single day where Commissioners had expressed their desire to vote a day or two thereafter.

If it is true that the vote was indeed conducted in accordance with "standard Commission procedure" then it is clear that "standard Commission procedure" does not protect the rights of the Commissioners to vote and have their votes counted.

And despite clear evidence to the contrary, Mathews continues to insist that "every commissioner had a full opportunity to vote." It is disturbing that a federal commission charged by law with investigating voting rights abuses should deny its own members a vote on a report to Congress.

The October 1995 hearing focused on serious problems that had been brought to the attention of the Subcommittee. Those concerns were raised with the Staff Director and the Commissions General Counsel during that hearing. Unfortunately, the Commission has not taken any action to prevent these problems from recurring. The Commission leadership has failed to address very these serious problems, including: use of subpoenas to chill First Amendment rights, the failure to accomplish the one task mandated by Congress issuing a statutory report for fiscal year 1995; and serious allegations that the Staff Director denied Commissioners the opportunity to vote on a report issued in 1995.

These are just a few of the serious problems that have been uncovered at the Commission. The legislation proposes sensible, minor changes to the Commissions authorizing statute intended to address some of these problems. Once the Subcommittee has heard from GAO and OPM, a more comprehensive approach to reauthorization can be pursued.

Now, more than ever, this nation needs an effective voice of leadership to address the sensitive issues of racial discrimination and racial hatred and to bring hope to those who seek a reasoned and peaceful solution to these serious problems. The Commission is the institution designated by Congress and the President to fulfill this role for the nation. Hopefully, the authorization statute will advance the Commissions fufillment of this important role.

Hearings

The Committees Subcommittee on the Constitution held one day of oversight hearings of the U.S. Commission on Civil Rights on October 19, 1995 and one day of hearings on H.R. 3874, the "Civil Rights Commission Act of 1996," on July 24, 1996. On October 19, 1995, testimony was received from six witnesses: Representative Mark Foley; Representative Louise Slaughter; Representative Dana Rohrabacher; Mary Mathews, Staff Director, U.S. Commission on Civil

Rights; Stephanie Moore, Deputy General Counsel, U.S. Commission on Civil Rights; and Robert Ross, Jr., Executive Director, FLA-187 Committee, Inc.

On July 24, 1996, testimony was received from six witnesses: Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Mary Mathews, Staff Director, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Robert George, Commissioner, U.S. Commission on Civil Rights; Carl Anderson, Commissioner, U.S. Commission on Civil Rights; and Russell Redenbaugh, Commissioner, U.S. Commission on Civil Rights.

Committee Consideration

On July 25, 1996, the Subcommittee on the Constitution met in open session and ordered reported favorably the bill H.R. 3874 by a vote of five to two, a quorum being present. On September 18, 1996, the Committee met in open session and ordered reported favorably the bill H.R. 3874 without amendment by a recorded vote of twelve to six, a quorum being present.

Votes of the Committee

1. Amendment offered by Mr. Watt to delete provisions of H.R. 3874 dealing with the Commissions issuance of subpoenas and requirements for dismissal of the Commissions Staff Director, which was defeated by a rollcall vote of 7-14.

AYES

NAYS

Mr. Berman Mr. Hyde Mr. Nadler Mr. Sensenbrenner Mr. Scott Mr. McCollum Mr. Watt Mr. Gekas Ms. Lofgren Mr. Coble Ms. Jackson Lee Mr. Canady Ms. Waters Mr. Inglis Mr. Buyer Mr. Hoke Mr. Bono Mr. Bryant (TN) Mr. Chabot Mr. Flanagan Mr. Barr

2. A motion to favorably report H.R. 3874 was agreed to by a rollcall vote of 12-6.

AYES

NAYS

Mr. Hyde Mrs. Schroeder Mr. Moorhead Mr. Scott Mr. McCollum Mr. Watt Mr. Coble Ms. Lofgren Mr. Canady Ms. Jackson Lee Mr. Inglis Ms. Waters Mr. Buyer Mr. Hoke Mr. Bono Mr. Chabot Mr. Flanagan Mr. Barr Committee Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Committee on Government Reform and Oversight Findings

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(l)(3)(B) of House rule XI is applicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3874, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 20, 1996.
Hon. Henry J. Hyde,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3874, the Civil Rights Commission Act of 1996.

Enacting H.R. 3874 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,
James L. Blum
(For June E. ONeill).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3874.

2. Bill title: Civil Rights Commission Act of 1996.

3. Bill status: As ordered reported by the House Committee on the Judiciary on September 18, 1996.

4. Bill purpose: H.R. 3874 would authorize the appropriation of $8.75 million for fiscal year 1997 for the United States Commission on Civil Rights, the same amount as the commissions 1996 appropriation. In addition, the bill would change certain laws governing the commissions operation. Specifically, HR. 3874 would modify the commissions authority to issue subpoenas, specify terms for removal of the commissions staff director, and make the commission subject to the Freedom of Information Act and other laws relating to public accountability.

5. Estimated cost to the Federal Government: Enacting H.R. 3874 would affect discretionary spending, subject to appropriation of the authorized funds, as shown in the following table. This estimate assumes that the authorized amount will be appropriated for fiscal year 1997 and that spending will occur at the historical rate for the commission. Other provisions of the bill would have no significant impact on spending by the Civil Rights Commission.

-- (PLEASE REFER TO ORIGINAL SOURCE FOR TABLE) --

The costs of this bill fall within budget function 750.

6. Pay-as-you-go considerations: None.

7. Estimated impact on State, local, and tribal governments: H.R. 3874 contains on intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), and would have no significant impact on the budgets of state, local, or tribal governments.

8. Estimated impact on the private sector: H.R. 3874 would impose no new private-sector mandates as defined in Public Law 104-4.

9. Previous CBO estimate: None.

10. Estimate prepared by: Federal Cost Estimate: Mark Grabowicz. State and Local Government Impact: Karen McVey. Private Sector Impact: Matthew Eyles.

Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3874 will have no significant inflationary impact on prices and costs in the national economy.

Section-by-Section Analysis

Section 1. Short Title

This section provides that the Act may be cited as the "Civil Rights Commission Act of 1996".

Section 2. Extension and Authorization of Appropriations

Section 2 of the bill would authorize an appropriation of $8,750,000 for the Commission for Fiscal Year 1997. This is the same amount appropriated for the Commission in Fiscal Year 1996, and it is in accord with the amount approved by the House in the Commerce, Justice, State and the Judiciary Appropriations bill, H.R. 3814.

In addition, this section provides for a one-year reauthorization of the Commission. The General Accounting Office and the Office of Personnel Management are both currently conducting intensive studies of various aspects of the Commissions activities and policies. The one-year reauthorization will permit the Commission to continue its ongoing projects, and it will permit the authorizing committee to revisit next year the composition, duties, and powers of the Commission.

Section 3. Subpoenas

The Commission has the statutory authority to issue subpoenas in furtherance of its investigatory responsibilities. 42 U.S.C. 1975a(e)(2). It is standard practice for the Commission staff to issue subpoenas to all witnesses at hearings, whether or not there is any reason to believe that such compulsory process is necessary or warranted. Subpoenas are signed by the Chairman. The Commissioners are not involved in the decision to issue subpoenas, and are unable to monitor the scope of the requests for documents.

There appears to be widespread agreement that possession of the subpoena power is necessary for the Commission to accomplish its statutory mandate. Current Commission practice, however, allows the issuance of subpoenas in the absence of careful consideration and sound judgment. The Subcommittee has not been alone in these concerns they have also been raised by the individuals subpoenaed to appear at the Commissions 1995 Miami hearing, Members of Congress, civil libertarians and members of the press.

The reauthorizing statute would amend the subpoena authority by requiring "a majority vote of those (Commissioners) present and voting" before a subpoena could be issued. This is a measured attempt to inject some accountability into the Commissions invocation of this most potent statutory authority and to help insure that the subpoena authority is exercised with the necessary due care and good judgment. It would make the Commissions subpoena power much like Congress, where subpoenas may be issued only after a vote by the relevant committee or subcommittee members.513

Of course, this change to the statute does not preclude the Commission from implementing additional safeguards in the future should it choose to do so.

513 See, Rule XI, Clause 2(m)(2), Rules of the 104th Congress, U.S. House of Representatives.

Section 4. Staff Director

While the eight Commissioners alone have the right to vote on Commission business, they are only involved with the Commission on a part-time basis. The day-to-day operations of the Commission are directed by the full-time staff, and in particular by the Staff Director. The Staff Director, who is appointed by the President with the concurrence of a majority of the Commission (i.e., at least five of the eight Commissioners), serves "as the administrative head of the Commission," 42 U.S.C. 1975b(a)(1). The Staff Director thus exercises an extraordinary amount of influence over the Commissions activities.

In order to provide an incentive for the Staff Director to work more cooperatively with all Commissioners, the reauthorizing statute provides that the Staff Director may, at any time, be removed from office by a majority vote of the Commissioners (i.e., by at least five Commissioners). If the Commissioners were to exercise this power, the President would have to appoint a new Staff Director acceptable to a majority of the Commission.

Section 5. Application of Freedom of Information, Privacy, and Sunshine Acts

This section is needed to correct an oversight in the existing statute. As currently constituted, the Commission is technically exempt from a variety of federal laws providing for greater public accountability and accessibility. This provision makes sure that those laws will apply by making it explicit that the Commission is an "agency" for purposes of these statutes.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CIVIL RIGHTS COMMISSION ACT OF 1983

* * * * * * *

SEC. 3. DUTIES OF THE COMMISSION.

(a) * * *

* * * * * * *

(e) Hearings and Ancillary Matters.

(1) * * *

(2) Power to issue subpoenas. The Commission may, by a majority vote of those present and voting issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) Staff.

(1) * * *

* * * * * * *

(3) Removal of staff director. The Commission may, by a majority vote of the Commission, remove the staff director from office.

* * * * * * *

(f) Application of Certain Provisions of Law. The Commission shall be included in the term "agency" as such term is defined for the purposes of sections 552, 552a and 552b of title 5, United States Code.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. There are authorized to be appropriated to carry out this Act $8,750,000 for fiscal year 1997. None of the sums authorized to be appropriated for fiscal year 1995 1997 may be used to create additional regional offices.

SEC. 6. TERMINATION.

This Act shall terminate on September 30, 1996 1997.DISSENTING VIEWS

While we strongly support the existence of, need for, and work of the United States Commission on Civil Rights, we dissent to this reauthorization because of the harsh restrictions placed upon the Commission within this proposed reauthorization.

Specifically, we object to the following:

(1) In the view of many (but not all) of us, the Commission should be extended for more than one year. It is an unnecessary and intrusive requirement to have the Commission constantly under the obligation of responding to the many requests made by the majority of its time and resources, which a one year extension guarantees will be the case. We would prefer a longer reauthorization period, which would permit the Commission to conduct its responsibilities thoroughly.

(2) The reauthorization proposes funding at $8.75 million, which is level funding (not accounting for inflation), but well below the Presidents request of $11.4 million. We would prefer a higher level of funding to help the Commission continue and expand its mission of studying, documenting, and publishing information about civil rights issues in this nation.

(3) The proposed change in the subpoena authority of the Commission will weaken its ability to gather witnesses to testify on sensitive but important matters. The change is unnecessary, and we oppose it. The current practice of the Commission, notwithstanding its authority, is to only recommend enforcement of a subpoena to the Attorney General by a majority vote of the Commission. The Democrats offered an amendment to codify that in Subcommittee, but that amendment was rejected. The proposed change may require a Commission vote of each invited witness, a time consuming and unnecessary burden on what is a part-time Commission.

More importantly, the practice of issuing subpoenas to all invited witnesses is motivated by a desire to protect those witnesses who are intimidated, by community pressure or otherwise, from appearing. Commissioners and representatives of the civil rights community testified that the practice of issuing a subpoena to reluctant witnesses, afraid of retaliation from their neighbors, was to protect the witnesses. The Commissioners also testified that objectors to the issuance of subpoena have been accommodated over the years, through negotiation with the Commissions counsel, over the terms or effect of the subpoena. There have been virtually no reports of abuse of the subpoena power over the many years of the Commission, and the one incident testified to at the Subcommittees hearing on this matter has been exploited as compelling this statutory change. We believe that the one known incident alleging misuse of subpoena authority merits our oversight, and consideration, and perhaps recommended changes in the practice of the Commission, but not this statutory change. We understand that one reason the majority seeks to reauthorize the Commission for just one year is to wait for the results of a GAO study on the work of the Commission, expected in 1997. In our view, that report may shed important light on this aspect of the Commissions work, and any statutory change to the subpoena authority of the Commission should suspend pending the reports release.

(4) A provision that the Staff Director be removable by a majority of the Commission. The Commissions Staff Director is currently appointed (and removable) by the President, with the concurrence of a majority of the Commission. The majority proposes to permit the Commission, by a majority, to remove the Staff Director as well, to "insure that the Staff Director, who effectively runs the Commission on a day to day basis, has the incentive to work cooperatively with all members of the Commission." In our view, the Staff Director should be removable by the person, in this case the President, that appointed her. The proposed change injects a layer of politics into the management of the Commission which is unnecessary, and divisive.

For these reasons we oppose this reauthorization of the Commission. We remain eager to see the Commission reauthorized, but cannot support the restrictions put on it by the majority, and so we dissent.

John Conyers, Jr.

Pat Schroeder.

Barney Frank.

Melvin L. Watt.

Xavier Becerra.

Xavier Becerra.

## C. House Report 105-439: Civil Rights Commission Act of 1998

Committee Reports

105th Congress; 2nd Session

House Report 105-439

*105 H. Rpt. 439*

CIVIL RIGHTS COMMISSION ACT OF 1998

DATE: March 12, 1998. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

SPONSOR: Mr. Canady of Florida submitted the following report together with ADDITIONAL VIEWS

(To accompany H.R. 3117)

(Including cost estimate of the Congressional Budget Office) The Committee on the Judiciary, to whom was referred the bill (H.R. 3117) to reauthorize the United States Commission on Civil Rights, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

COMMITTEE: from the Committee on the Judiciary

R E P O R T

TEXT:

TABLE OF CONTENTS

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Act of 1998".

SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.

(a) Extension. Section 6 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975d) is amended by striking "1996" and inserting "2001".

(b) Authorization. The first sentence of section 5 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975c) is amended to read "There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal years through fiscal year 2001.".

SEC. 3. STAFF DIRECTOR.

Section 4(a)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)(1)) is amended

(1) by striking "There shall" and inserting the following:

"(A) In general. There shall";

(2) by striking "(A)" and inserting the following:

"(i)";

(3) by striking "(B)" and inserting the following:

"(ii)"; and

(4) by adding at the end the following:

"(B) Term of office. The term of office of the Staff Director shall be 4 years.

"(C) Review and retention. The Commission shall annually review the performance of the staff director.".

SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY, SUNSHINE, AND ADVISORY COMMITTEE ACTS.

Section 4 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b) is amended by adding at the end the following:

"(f) Application of Certain Provisions of Law. The Commission shall be considered to be an agency, as defined in section 551(1) of title 5, United States Code, for the purposes of sections 552, 552a, and 552b of title 5, United States Code, and for the purposes of the Federal Advisory Committee Act.".

SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.

Section 4 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b) is further amended by adding at the end the following:

"(g) Independent Audit. Beginning with the fiscal year ending September 30, 1998, and each year thereafter, the Commission shall prepare an annual financial statement in accordance with section 3515 of title 31, United States Code, and shall have the statement audited by an independent external auditor in accordance with section 3521 of such title.".

SEC. 6. TERMS OF MEMBERS.

(a) In General. Section 2(c) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975(c)) is amended by striking "6 years" and inserting "5 years".

(b) Applicability. The amendment made by this section shall apply only with respect to terms of office commencing after the date of the enactment of this Act.

SEC. 7. REPORTS.

Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)(1)) is amended by striking "at least one report annually" and inserting "a report on or before September 30 of each year".

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

(a) Implementation of GAO Recommendations. The Commission shall, not later than June 30, 1998, implement the United States General Accounting Office recommendations regarding revision of the Commissions Administrative Instructions and structural regulations to reflect the current agency structure, and establish a management information system to enhance the oversight and project efficiency of the Commission.

(b) ADA Enforcement Report. Not later than September 30, 1998, the Commission shall complete and submit a report regarding the enforcement of the Americans with Disabilities Act of 1990.

(c) Religious Freedom in Public Schools.

(1) Report required. Not later than September 30, 1998, the Commission shall prepare, and submit under section 3 of the Civil Rights Commission Act of 1983, a report evaluating the policies and practices of public schools to determine whether laws are being effectively enforced to prevent discrimination or the denial of equal protection of the law based on religion, and whether such laws need to be changed in order to protect more fully the constitutional and civil rights of students and of teachers and other school employees.

(2) Review of enforcement activities. Such report shall include a review of the enforcement activities of Federal agencies, including the Departments of Justice and Education, to determine if those agencies are properly protecting the religious freedom in schools.

(3) Description of rights. Such report shall also include a description of

(A) the rights of students and others under the Federal Equal Access Act (20 U.S.C. 4071 et seq.), constitutional provisions regarding equal access, and other similar laws; and

(B) the rights of students and teachers and other school employees to be free from discrimination in matters of religious expression and the accommodation of the free exercise of religion; and

(C) issues relating to religious non-discrimination in curriculum construction.

(d) Crisis of Young African-American Males Report. Not later than September 30, 1999, the Commission shall submit a report on the crisis of young African-American males.

(e) Fair Employment Law Enforcement Report. Not later than September 30, 1999, the Commission shall submit a report on fair employment law enforcement.

(f) Regulatory Obstacles Confronting Minority Entrepreneurs. Not later than September 30, 1999, the Commission shall develop and carry out a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs, and report the results of such study under section 3 of the Civil Rights Commission Act of 1983.

SEC. 9. ADVISORY COMMITTEES.

Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(d)) is amended by adding at the end the following: "The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.".

Purpose and Summary

The purpose of the "Civil Rights Commission Act of 1998," H.R. 3117, is to extend the authorization of the United States Commission on Civil Rights through 2001. The legislation also institutes reforms to help ensure that the Commission will accomplish its mission in a more efficient and effective manner. The Commissions statutory authorization expired on September 30, 1996, and it has been operating absent authorization since then.

The legislation provides for a four year term of office for the Commissions Staff Director, and requires the Commission to annually review the performance of the staff director. The current statute is silent as to these specific provisions.

H.R. 3117 applies the Freedom of Information Act, the Privacy Act, the Sunshine Act, and the Federal Advisory Committee Act to the Commission. The bill requires that the Commission prepare an annual financial statement for audit by an independent external auditor.

The Civil Rights Commission Act of 1998 reduces the term of membership for future Commissioners from six years to five years. Existing Commissioners terms are unaffected by this section, and there is no limit to the amount of times a commissioner can be reappointed.

The bill requires the Commission to implement the General Accounting Office recommendations regarding revision of the Commissions Administrative Instructions and structural regulations to reflect the current agency structure, and to establish a management information system to enhance the oversight and project efficiency of the Commission. The legislation requires the Commission to complete its report regarding the enforcement of the Americans with Disabilities Act of 1990, a report regarding religious freedom in schools, a report on the crisis of young African-American males, and a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs.

H.R. 3117 provides that the purpose of the Commissions state advisory committees is to conduct fact finding activities and develop findings or recommendations for the Commission, and requires that any report by such an advisory committee shall be fairly balanced as to the viewpoints represented.

These reforms are designed to provide new direction and guidance to the Commission, and to help make the Commission more responsive, energized, and relevant.

Background and Need For the Legislation

The United States Commission on Civil Rights was originally established in 1957 as a temporary agency designed to serve as an independent, bipartisan, fact-finding agency of the executive branch of the federal government. The Commissions original authorizing statute, the Civil Rights Act of 1957, provided that the Commissions final report was to be issued in 1959, and that the Commission would cease to exist sixty days after the submission of its final report. (Civil Rights Act of 1957, P.L. 85-315, section 104.)

Congress reevaluated its initial conviction that the Commission was to be temporary, and has since reauthorized the Commission numerous times since its inception in 1957. The last statutory authorization, contained in the Civil Rights Commission Amendments Act of 1994, P.L. 103-419, expired on September 30, 1996, and the Commission has been operating without authorization since that time. (42 U.S.C. section 1975f.)

As currently constituted, the Commission has eight members: four appointed by the President, two appointed by the Senate and two appointed by the House (42 U.S.C. 1975 et seq.). The Commission currently has an annual budget of $8.75 million, 8 part time commissioners, and a staff of 91. From its inception the Commission has been a bipartisan entity, and the current authorizing statute requires that not more than four of the commissioners shall at any one time be of the same political party. (42 U.S.C. section 1975(b).)

The Commissions duties include: (1) investigating claims of voting rights deprivation because of color, race, religion, sex, age disability, or national origin, as well as any pattern or practice of fraud; (2) studying and collecting information concerning legal developments constituting discrimination or denial of equal protection because of race, color, religion, sex, age, handicap, or national origin; (3) appraising laws and policies of the Federal Government with respect to discrimination or denial of equal protection; (4) serving as a national clearinghouse for information with respect to the above; and (5) preparing public service announcements and advertising campaigns to discourage discrimination and denials of equal protection. (42 U.S.C. section 1975a.)

America has made much progress in the areas of civil rights and race relations since 1957 when the Commission was founded. Despite this significant progress, there still remain certain pressing issues of civil rights. This Nation needs objective and informed voices addressing these issues. Fortunately, many of these voices now exist within and outside of government.

A bipartisan, independent governmental entity can have a significant, positive impact on Americans understanding of current civil rights issues. Such an apolitical entity has the potential to speak with an authoritative voice that unifies Americans, emphasizes important principles, and advances understanding of civil rights. Unfortunately, as of late the U.S. Civil Rights Commission has largely squandered its opportunity to be a credible voice on important civil rights issues. This view is confirmed by independent analyses of the Commission by the U.S. General Accounting Office, the U.S. Office of Personnel Management, and the Citizens Commission on Civil Rights.

This legislation is designed to enable the Civil Rights Commission to keep pace with changes and become more responsive and effective in addressing the important civil rights issues facing the nation as we approach the 21st Century.

General Accounting Office Report

In response to numerous complaints of mismanagement, the Chairman of the Constitution Subcommittee of the House Judiciary Committee requested the U.S. General Accounting Office to conduct a review of the Civil Rights Commissions management of projects during fiscal years 1993 through 1996. In June 1997, the U.S. General Accounting Office completed its analysis of the Commission. In a report entitled "U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls," GAO found the Commission to be "an agency in disarray." (GAO Report at 7.)

In violation of relevant federal statute, the Commission has failed to update obsolete documentation explaining its purpose, leaving "the public and Commission employees unsure of the agencys procedures and processes for carrying out its mission." (Id.) Accordingly, H.R. 3117 requires the Commission to implement GAOs recommendations regarding revision of the Commissions administrative instructions and structural regulations to reflect the current agency structure, so that the public is better informed of the Commissions structure and organization. In addition, H.R. 3117 applies the Freedom of Information, Privacy, Sunshine, and Advisory

Committee Acts to the Commission. These important laws are designed to ensure that government conducts its operations in the spirit of openness, and respect for the publics right to know about, and participate in, the work of their government. Application of these laws to the Commission could enhance its responsiveness and relevance to the American people and their daily lives.

GAO

" states repeatedly in the report that it could not conduct a complete review in most areas because key commission records were "lost, misplaced or nonexistent," (Id. at 7,) or "misplaced, misfiled, or not available for review," (Id. at 10, 19.) Furthermore, "(t)he Commissions management controls over its operations are weak and do not ensure that the Commission is able to meet its statutory responsibilities or its program objectives." (Id. at 11.) The legislation responds to this deficiency by requiring the Commission to establish a management information system to enhance the oversight and project efficiency of the Commission.

The report also details fiscal mismanagement at the Commission. "The Commissions report on its internal controls in fiscal year 1996 appears to misrepresent information concerning audits of the Commission." (Id.) In paying its private contractors, "(t)he commission does not verify the accuracy of the invoices submitted to NFC (the National Finance Center of the U.S. Department of Agriculture)." (Id. at 11.) In other words, if a contractor submits a bill to the Commission, the Commission makes no effort to ensure that the contractor has rendered any services, or is entitled to payment. The Commission has never been audited and is not required by statute to have an Inspector General. (Id. at 11, note 8.)

Accordingly, the bill requires the Commission to prepare an annual financial statement for audit by an independent external auditor. Every governmental entity should periodically review its fiscal health and the Commission is no exception. Moreover, an independent audit could pay great dividends in the form of cost savings for the Commission.

One of the Commissions principal duties is the creation of published products reflecting its findings for government and public use. "Projects embody one of the key components of the Commissions operations yet the management of projects is weak or nonexistent." (Id. at 20.) The Commissions projects, a main reason for its existence, consume approximately only 10% of its overall budget. (Id. at 14.)

GAO confirms that completion of the Commissions reports is plagued by delay, which adversely effects the reports quality, usefulness, and relevance. The lengthy time frame for completion of projects yields them useless and obsolete in many cases. (Id. at 15-18.) In addition to the time delays, projects suffer from quality problems in planning and implementation as well. (Id. at 18.) The Commission has a problem with communications among its own offices and officials, and this lack of coordination renders their efforts duplicative. (Id. at 19-20 ("With no coordination among the offices, duplicate mailings are likely.").) For example, the Commissions report on ethnic

tensions in Los Angeles omits any discussion or consideration of the riots following the Rodney King verdict, certainly a significant event on racial tensions in the Los Angeles area.

To respond to this problem, H.R. 3117 sets forth selected projects, with specific deadlines, for the Commission to complete. All of these projects have been independently selected as priorities by the Commission itself. Current statute provides that Congress may require the Commission to submit reports as Congress "shall deem appropriate." (42 U.S.C. section 1975a(c)(2).) At certain points in the Commissions history Congress has identified specific projects it has required the Commission to complete. (See, e.g., Civil Rights Commission Act of 1979, P.L. 96-81 (Commission shall submit report to Congress regarding laws and policies of federal government that deny equal protection to Americans who are members of eastern- and southern-European ethnic groups, including an analysis of adverse consequences of affirmative action programs); Civil Rights Commission Amendments Act of 1994, P.L. 103-419 (Commission shall submit at least one report annually to President and Congress that monitors civil rights enforcement efforts in the United States).) It is hoped that this statutory requirement will assist the Commission to effectively focus its resources on the completion of projects and studies in a more timely manner.

GAOs "overall assessment of the Commission suggests that its operations lack order, control, and coordination. Management is unaware of how federal funds appropriated to carry out its mission are being used, lacks management controls over key functions, and has not requested independent audits of Commission operations. These weaknesses make the Commission vulnerable to misuse of its resources. The lack of attention to basic requirements applying to all federal agencies, such as up-to-date descriptions of operations and internal guidance for employees, reflects poorly on the overall management of the Commission. . . . Results from independent reviews of the Commissions operations, such as the Citizens Commission on Civil Rights and OPM, substantiate our assessment of the Commissions weak management and the need for improvements." (Id. at 20-21.)

To correct these problems, GAO recommended the Commission update its regulatory provisions, update its internal management guidance, and establish a management information system. (Id. at 21.) H.R. 3117 requires the Commission to implement GAOs recommendations by June 30, 1998.

The Commissions response to GAOs report came in two sets; one from four commissioners and the second from the Chairperson, Vice Chairperson, two remaining commissioners and the Commissions Office of the Staff Director. The first response, a brief letter from Commissioners Anderson, George, Horner, and Redenbaugh, concurred with GAOs assessment, and indicated that these four commissioners will closely monitor the Commission to ensure that the recommendations are implemented. (Id. at 38.)

The second response, by Chairperson Berry, Vice Chairperson Reynoso, and Commissioners Higginbotham and Lee, challenged GAOs report, calling it "short" on historical content, relevant context, and substantiated facts. These four Commissioners nevertheless pledged to implement GAOs recommendations. (Id. at 22.)

GAOs report points out serious management deficiencies within the Commission. GAOs difficulty in obtaining basic information from the Commission is mirrored by the Commissions failure to cooperate with Congress in providing information necessary for meaningful oversight of the agency. The Commission has been less than forthcoming in providing requested documents and answers to questions in a timely and complete manner.

Congress takes very seriously any agencys efforts to frustrate legitimate congressional oversight responsibilities. The GAO report confirms this assessment of the Commission and its reluctance to be forthright in allowing outside parties to conduct assessments of its operations.

OPM Report

In addition to the GAO report, the Chairman of the House Judiciary Subcommittee on the Constitution requested that the U.S. Office of Personnel Management conduct a thorough Personnel Management Evaluation of the Commission. "OPM found an agency badly in need of managerial attention." (OPM Report at 1.) OPMs report parallels GAOs conclusions in all areas. OPMs report was of a more limited scope, and predated GAO s, so only a cursory summary is included in this report.

OPMs review and report analyzed Commission operations in the period from October 1992 through September 1995. OPM concentrated on the Commissions use of details, temporary appointments, and reassignments. OPM reviewed the Commissions use of consultants, its process for handling employee complaints, and the overall efficiency and effectiveness of the Commissions human resources management. OPM also reviewed the Commissions recruitment, placement, performance management, and the extent that the Commission complies with applicable civil services laws, rules, and regulations.

OPM found "numerous instances of poor documentation of staffing actions." (OPM Report at 1.) "One appointment was made in violation of applicable laws and regulations." (Id. At 2.) GAOs report echoes OPMs concerns with poor documentation, and H.R. 3117 addresses this problem by requiring the Commission to implement GAOs recommendations by September 30, 1998.

Like GAO, OPM identified problems with the Commissions performance management system. OPM stated that "(t)he results of the OPM questionnaire and interviews reveal a highly negative perception on the part of managers and employees regarding the organizational climate of the agency. Morale is low, and effective communication is practically non-existent. The degree of unfavorable responses far exceeds that of any agency in the OPM questionnaire data base." (OPM Report at 2 (emphasis added).) H.R. 3117 is designed to help correct this problem by requiring the Commission to implement GAOs recommendations with regard to its management information system.

Commission General Counsels Teaching Arrangement

On July 17, 1997, the Constitution Subcommittee held an oversight hearing on the U.S. Commission on Civil Rights. The Subcommittee discovered that Stephanie Moore, General Counsel of the Commission, taught two undergraduate courses at the University of Pennsylvania in Philadelphia during both the Spring Semester of 1997 and the Fall Semester of 1996. According to the University, these courses, "History of American Law since 1877" and "History of Law and Social Policy," took place on Tuesday and Thursday during normal business hours.

Mary Frances Berry, Chairperson of the Commission and a member of the faculty at the University of Pennsylvania, is the regular instructor of these courses. Ms. Moore was substituting for Ms. Berry while she was on leave from the University faculty. Questions arose as to the propriety of this arrangement, and whether the Commission in fact needs a full time General Counsel. Moreover, some of the management deficiencies pointed out in the GAO report are related to the responsibilities of the General Counsel.

In internal memoranda to Ms. Moore from both the Staff Director and the Designated Agency Ethics Official, Miquel Sapp, they both approve Ms. Moores arrangement, stating that this teaching position "is not in conflict with (her) official duties." Yet the classes took place in Philadelphia during regular business hours every Tuesday and Thursday. Section 2636.307(d)(1) of the regulations define the standard for authorization, and state that the "teaching may be approved by the designated agency ethics official only when () the teaching will not interfere with the performance of the employees official duties."

The Chairperson has stated that the General Counsels absence from work two days a week does not interfere with the performance of official duties. Ms. Moores employee time sheets indicate that during 1996, Ms. Moore billed 213 hours 10.5% of Ms. Moores time to a category called "other leave." This is a category distinct from "annual leave" or "sick leave." The Commission has proffered no explanation for why Ms. Moores time was billed to the "other leave" category.

In the interests of allowing a full and fair exploration of the issues at the oversight hearing, the subcommittee asked Chairwoman Berry to be prepared to answer questions from the subcommittee regarding the General Counsels arrangement. The subcommittee further requested that the Commission provide the subcommittee with certain background information prior to the hearing, including copies of Ms. Berrys and Ms. Moores employment contracts with the University. The subcommittee was told the contracts did not exist.

Chairwoman Berrys oral testimony at the hearing regarding this arrangement raised even more questions. Under questioning from Subcommittee Member Asa Hutchinson, Ms. Berry denied that she had recommended Ms. Moore for the teaching position, and denied that she had control over the situation:

Rep. Hutchinson: "It is my understanding from your testimony thus far that you were aware from the very beginning in fact, you recommended Stephanie Moore for this teaching position."

Berry: "No. I said she had indicated that she would like to do it, and I suggested she talk to the Staff Director about whether it could be done without conflicting with her duties."

(Unedited Transcript, lines 2224-2231.)

However, under earlier questioning from Subcommittee Member Ed Bryant, Ms. Berry had explained her duties as the instructor of the course for which Ms. Moore was substituting:

"I go on leave whenever I want as a term of my employment, and then I bring young scholars who want to do some teaching in to teach courses, and we pay them. . . . (E)mployees (of the Commission) are encouraged to teach by the regulations if it can be done. I said that if the general counsel wanted to ask the Staff Director, if you get the Staff Directors approval and the Office of Ethics approval, but if it interferes with your work, I am going to make you quit and you can t do it and I am going to be asking if it interferes."

(Unedited Transcript of Oversight Hearing, July 17, 1997, page 76-77, lines 1826-1836 (emphasis added).)

Since Ms. Berry "brings scholars in" at the University of Pennsylvania, and can "make someone quit" at the Commission if it interferes with work responsibilities, it would appear from her testimony that she exerts substantial control over the situation in question.

Later, Ms. Berry emphasized that the arrangement was approved by Mary Mathews, the Staff Director, as well as Miguel Sapp, the designated agency ethics official. (Unedited Transcript, lines 2260-2274.) Mr. Sapp is a subordinate of the General Counsel, Stephanie Moore.

A number of other outstanding questions remain regarding this arrangement. The Commission has thus far failed to proffer an explanation of how the Commissions important work was strengthened by having its General Counsel absent from the office two days a week, for two semesters, teaching an undergraduate course at a university in Philadelphia. The Commissions core mission is to study and report on important civil rights issues affecting Americans, and it is difficult to discern how this teaching arrangement relates in any way to this important core mission. The Commission has vehemently defended the legality of this arrangement, but has not even asserted that it was a worthwhile endeavor and in any way contributed to the Commissions purpose.

As a result of this peculiar arrangement, the Chairman of the Subcommittee requested that the Office of Special Investigations of the General Accounting Office undertake a detailed investigation of this matter. That investigation is ongoing. However, General Counsel Stephanie Moore and former Staff Director Mary Mathews have both refused to cooperate with GAOs investigation. Ms.

Mathews has failed to respond to GAOs numerous requests for interviews, and Stephanie Moore has insisted on communicating with GAO only in writing, and then only through her private attorney.

Such an unusual and unwieldy communications arrangement deprives GAO of the ability to fully investigate the facts underlying this situation. Ms. Moore and Ms. Mathews are the two individuals with the most direct knowledge of the specifics of this situation. Their refusal to cooperate with a Congressional investigation of their deeds raises serious questions about the propriety of the teaching arrangement.

The response to GAOs investigation of this teaching arrangement continues a consistent pattern of secrecy in Commission dealings. Much of the Commissions internal operations are conducted outside of the public eye. H.R. 3117 applies the federal Freedom of Information, and Sunshine Acts to the Commission, which could help ensure that the operations of the Commission are held to greater public scrutiny. In addition, H.R. 3117s requirement of an independent audit of the Commission could also expose inefficiencies within the Commission, and empower it to more directly focus on its core mission.

The Staff Director had a significant role in approving this teaching arrangement. Commissioner Anderson testified at the July 1997 oversight hearing that he and the other Commissioners (with the obvious exception of Chairperson Berry) had no knowledge of this arrangement, but would have likely questioned its propriety had they known. In response, H.R. 3117 makes the Staff Director directly accountable to the Commission by requiring an annual review of the Staff Director by the Commissioners.

Failure to Complete Reports

At a meeting of the Commission on July 11, 1997, it was reported that the Commission was conducting a report regarding civil rights at Wall Street firms, a report that has been held up for two years. Apparently, the reason for the delay was that the Commission demanded data from the firms and received a total of 36 boxes of this data, of which the Commission had analyzed one box in the past two years. In response, the Commission decided to hire an outside contracting firm to analyze the remaining 35 boxes within 60 days at a cost of $25,000. This inability to complete its tasks is a recurring pattern within the Commission.

GAO confirms this assessment. "Projects embody one of the key components of the Commissions operations yet the management of projects is weak or nonexistent." (GAO Report at 20.) The Commissions projects, the principal rationale for its existence, consume approximately only 10% of its overall budget. (Id. at 14.) GAO confirms that completion of the Commissions reports is plagued by delay, which adversely effects the reports quality, usefulness, and relevance. (Id. at 15-18.) In addition to the time delays, projects suffer from quality problems in planning and implementation as well. (Id. at 18.) The Commission has a problem with communications among its own offices and officials, and this lack of coordination renders their efforts duplicative. (Id. at 19-

20.) During fiscal years 1993-1996, the Commission completed five projects, and deferred completion of seventeen projects. (Id. At 13-14, Tables 3-4.)

To respond to this problem, H.R. 3117 sets forth selected projects all previously initiated by the Commission and establishes deadlines for the completion of these projects. Current statute provides that Congress may require the Commission to submit reports as Congress "shall deem appropriate." (42 U.S.C. section 1975a(c)(2).) Historically, Congress has identified specific projects it has required the Commission to complete. (See, e.g., Civil Rights Commission Act of 1979, P.L. 96-81; Civil Rights Commission Amendments Act of 1994, P.L. 103-419.) This statutory requirement could enable the Commission to more effectively focus its resources so that its reports are more useful.

In Fiscal Year 1995, the Commission has failed to comply with its most basic statutory mandate that it submit to Congress at least one report every fiscal year that monitors federal civil rights enforcement in the United States. (42 U.S.C. 1975a.)

When one considers that the Commission received a $1.2 million increase in fiscal year 1995 over its prior year appropriation, failure to properly manage resources in a manner that fulfils its statutory mandate is a concern. The delinquent report was finally transmitted to Congress in fiscal year 1997, two years late.

H.R. 3117 clarifies the date on which the Commissions annual reports on federal civil rights enforcement are due, September 30. The current statute does not specify a date for the submission of the annual statutory reports, and there is confusion as to whether these reports are due on a calendar year cycle or fiscal year cycle. (The delinquent report mentioned above, however, complied with neither the fiscal year nor the calendar year deadline.)

Commission Abuse of Subpoena Power

At its October 1995 oversight hearing, the Subcommittee on the Constitution investigated claims that the Commission used its subpoena power to force individuals engaged in legal and constitutionally-protected political activities to testify before the Commission and to submit copies of their organizations internal records at its September hearings in Miami, Florida. The Commission backed down after the Commissions activities were subject to the scrutiny of the press and calls for a Congressional investigation.

Individuals engaged in constitutionally-protected political activities were served with subpoenas by the Commission to compel attendance against their will, along with detailed requests for internal records and documents regarding their First Amendment-protected activities. The subpoenas were served by federal marshals.

These actions had the effect of chilling the lawful exercise of First Amendment freedom of speech rights by citizens. In addition, because of the nature the topic, it created the appearance that the powers of the Commission were being used to target individuals based on the content of their political advocacy. After the Chairman of the Subcommittee announced there would be a congressional oversight hearing on the matter and recipients of the subpoenas threatened to file a lawsuit, Chairperson Berry wrote to the witnesses and informed them that if they chose not to attend, she would not enforce the subpoenas served on them.

As in other situations detailed in this report, internal Commission decisions leading to the subpoena incident were largely made in secret, outside of the public eye. In response, H.R. 3117 applies the federal Freedom of Information Act and federal Sunshine Act to the Commission, which should help lift the shroud of secrecy governing much of the Commissions operations and ensure that the operations of the Commission are held to greater public scrutiny.

Under Commission policy, the staff had the primary role in selecting who to subpoena and preparing the subpoenas for the signature of the Chair. The Commissioners had no knowledge of the circumstances surrounding the issuance of the subpoenas in question. Staff Director Mathews failed to inform even Chairperson Berry who signed the subpoenas and under whose authority they are served by United States Marshals that Florida Congressman Mark Foley had written the Staff Director expressing concern that his constituent was being harassed by Commission attorneys and that her civil rights were being violated. In response, H.R. 3117 makes the Staff Director directly accountable to the Commission by requiring an annual review of the Staff Director by the Commissioners.

Voting Irregularities

In 1995, the Commission released a report entitled "Funding Federal Civil Rights Enforcement" in which three of the Commissioners were deprived of a proper opportunity to vote a troubling practice for an agency supposedly devoted to investigating deprivations of voting rights. The then-Staff Director of the Commission, Mary Mathews was involved in this situation since she reported to Chairperson Berry on June 21, 1995 that the report had been approved by a vote of 4-1, with Commissioners Redenbaugh, Anderson, and George not voting. However, these three Commissioners had previously written to Berry on June 19, 1995, informing her that:

Because we have serious questions and reservations, we feel it necessary to discuss this report among the Commissioners and with the staff authors before voting. We kindly request that you arrange for such an opportunity through the Office of the Staff Director.

It is clear that the report would not have passed had the three Commissioners been provided the opportunity to vote. The Staff Director insisted at the time that the vote had been taken in accordance with "standard commission procedure." If that was the case, then standard commission procedure does not adequately protect the right of commissioners to vote and be heard.

Hearings

The Committees Subcommittee on the Constitution held an oversight hearing on the U.S. Commission on Civil Rights on July 17, 1997. Testimony was received from the following witnesses: Cornelia Blanchette, Associate Director, Employment and Education Issues, General Accounting Office; Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Carl Anderson, Commissioner, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Bill Allen, Former Chairman, U.S. Commission on Civil Rights.

Committee Consideration

On February 4, 1998, the Subcommittee on the Constitution met in open session and ordered reported the bill H.R. 3117, by a voice vote, a reporting quorum being present. On March 4, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 3117, with an amendment, by a voice vote, a reporting quorum being present.

Votes of the Committee

There were no recorded votes of the committee.

Committee Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Committee on Government Reform and Oversight Findings

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3117, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 9, 1998.
Hon. Henry J. Hyde,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3117, the Civil rights Commission Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), who can be reached at 226-2860, Leo Lex (for the state and local impact), who can be reached at 225-3220, and Matt Eyles (for the private-sector impact), who can be reached at 226-2649.

Sincerely,
June E. ONeill, Director.

Enclosure.

cc: Hon. John Conyers, Jr.

Ranking Minority Member.

H.R. 3117 Civil Rights Commission Act of 1998 Summary

H.R. 3117 would authorize the appropriation of such sums as may be necessary for the United States Commission on Civil Rights for fiscal years 1999 through 2001. The bill also would direct the commission to undertake several new initiatives with potential budgetary impacts. These initiatives include an independent audit of the commissions annual financial statement and studies on the enforcement of fair employment laws and on regulatory obstacles confronting minority entrepreneurs. The studies would be due by September 30, 1999.

Assuming appropriation of the necessary funds, CBO estimates that enacting H.R. 3117 would result in additional discretionary spending of about $28 million over the 1999-2003 period (if funding for the commission is maintained at the 1998 level with adjustments for the new initiatives) or about $30 million over the five-year period (if adjusted for inflation and the new initiatives). The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. H.R. 3117 would impose an intergovernmental and private-sector mandate, as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), by authorizing the United States Commission on Civil Rights to use subpoena power through September 30, 2001. CBO estimates the costs of this mandate to be minimal.

Estimated Cost to the Federal Government

For the purposes of this estimate, CBO assumes that the amounts estimated to be authorized by the bill will be appropriated by the start of each fiscal year and that outlays will follow the historical spending rate for the commission. Because H.R. 3117 would authorize such sums as necessary for the commission, CBO prepared two sets of estimated authorization levels, representing continued

funding at current levels of appropriations, both with and without adjustment for anticipated inflation. Both spending paths include estimated additional costs for the bills directives to the commission, about $1 million in fiscal year 1999 and less than $500,000 in each of the following years. The commission received an appropriation of $8.74 million in fiscal year 1998 and has requested $11 million for fiscal year 1999.

The estimated budgetary impact of H.R. 3117 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

-- (PLEASE REFER TO ORIGINAL SOURCE FOR TABLE) --

Pay-As-You-Go Considerations:

None.

Intergovernmental and Private-Sector Impact

H.R. 3117 would impose an intergovernmental and private-sector mandate because it would authorize the United States Commission on Civil Rights to operate through September 30, 2001, and thus would extend its subpoena power. The Civil Rights Commission Act of 1983 (Public Law 98-183), which created the commission and granted it certain powers, that authorizes the commission to require state and local government entities and private persons to furnish testimony, records, and other relevant information under threat of a subpoena. The use of those powers constitutes a federal mandate. Because the commission would likely exercise its subpoena power sparingly, CBO estimates that the intergovernmental and private-sector costs of the mandate would be very small and well below the relevant thresholds in UMRA.

Estimate Prepared By:

Federal Costs: Mark Grabowicz (226-2860), Impact on State, Local, and Tribal Governments: Leo Lex (225-3220), Impact on the Private Sector: Matt Eyles (226-2649).

Estimate Approved By:

Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

Constitutional Authority Statement

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, section 8, clause 18 of the Constitution.

Section-by-Section Analysis

The purpose of H.R. 3117 is to reauthorize the United States Commission on Civil Rights, and to institute reforms to help ensure that the Commission will accomplish its important mission in an efficient and effective manner.

Section 1. Short Title.

Provides that the Act may be cited as the "Civil Rights Commission Act of 1998."

Section 2. Extension and Authorization of Appropriations.

Extends the statutory authorization of the Commission until September 30, 2001, and authorizes to be appropriated such funds as may be necessary to carry out the Act through fiscal year 2001. The Commission is currently operating without statutory authorization.

Section 3. Staff Director.

The staff director is the full-time administrative head of the Commission and is appointed by the President with the concurrence of a majority of the Commission. Section 3 provides that the term of office for the staff director shall be four years, and requires the Commission to annually review the performance of the staff director. The current statute is silent as to a specific term of office for the staff director.

Section 4. Application of Freedom of Information, Privacy, Sunshine and Advisory Committee Acts.

Applies the Freedom of Information Act, the Privacy Act, the Sunshine Act, and the Federal Advisory Committee Act to the Commission. There is currently some doubt as to whether these laws apply to the Commission, and section 4 clarifies this issue.

Section 5. Requirement for Independent Audit.

Requires that the Commission prepare an annual financial statement for audit by an independent external auditor. In its report of June 1997, the U.S. General Accounting Office pointed out that the "Commissions management controls over its operations are weak and do not ensure that the Commission is able to meet its statutory responsibilities," its "spending data (is) not maintained by office or function," and its operations have not been audited by an outside accounting firm. (GAO Report at 10-11.) GAO has estimated that such an independent audit would cost approximately $20,000 to $40,000, but could pay far greater dividends in the form of cost savings to the Commission.

Section 6. Terms of Members.

Provides that the term of membership for future Commissioners shall be reduced from six years to five years. Existing Commissioners terms are unaffected by this section, and there is no limit to the amount of times a commissioner can be reappointed. Reduced term length could help to energize the Commission and make it more effective and responsive.

Section 7. Reports.

Clarifies the date annual reports on federal civil rights enforcement are due, September 30. The current statute is silent as to this provision.

Section 8. Specific Directions to the Commission.

Requires the Commission to implement the General Accounting Office recommendations regarding revision of the Commissions Administrative Instructions and structural regulations to reflect the current agency structure, and to establish a management information system to enhance the oversight and project efficiency of the Commission. Requires the Commission to complete its report regarding the enforcement of the Americans with Disabilities Act of 1990. Requires the Commission to complete a report regarding religious freedom in schools. Requires the Commission to complete its report on the crisis of young African-American males. Requires the Commission to develop and carry out a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs.

Section 9. Advisory Committees.

Provides that the purpose of the Commissions state advisory committees shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Provides that any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.

H.L.C. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CIVIL RIGHTS COMMISSION ACT OF 1983

* * * * * * *

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) * * *

* * * * * * *

(c) Terms. The term of office of each member of the Commission shall be 6 years 5 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

* * * * * * *

SEC. 3. DUTIES OF THE COMMISSION.

(a) * * *

* * * * * * *

(c) Reports.

(1) Annual report. The Commission shall submit to the President and Congress at least one report annually a report on or before September 30 of each year that monitors Federal civil rights enforcement efforts in the United States.

* * * * * * *

(d) Advisory Committees. The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District. The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.

* * * * * * *

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) Staff.

(1) Director. There shall

(A) 4In general. There shall be a full-time staff director for the Commission who shall

(A) (i) serve as the administrative head of the Commission; and

(B) (ii) be appointed by the President with the concurrence of a majority of the Commission.

(B) Term of office. The term of office of the Staff Director shall be 4 years.

(C) Review and retention. The Commission shall annually review the performance of the staff director.

* * * * * * *

(f) Application of Certain Provisions of Law. The Commission shall be considered to be an agency, as defined in section 551(1) of title 5, United States Code, for the purposes of sections 552, 552a, and 552b of title 5, United States Code, and for the purposes of the Federal Advisory Committee Act.

(g) Independent Audit. Beginning with the fiscal year ending September 30, 1998, and each year thereafter, the Commission shall prepare an annual financial statement in accordance with section 3515 of title 31, United States Code, and shall have the statement audited by an independent external auditor in accordance with section 3521 of such title.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal years through fiscal year 2001. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

SEC. 6. TERMINATION.

This Act shall terminate on September 30, 1996 2001.

Additional Views on H.R. 3117

Reauthorization of the U.S. Commission on Civil Rights

I strongly support the United States Commission on Civil Rights, and support this bill to reauthorize the Commission. However, I am concerned that, while the legislation places very specific restrictions and requirements upon the Commission, the Commission remains underfunded and therefore without the critical resources necessary to complete many of its duties.

Specifically, the legislation fails to propose a specific funding level for the Commission over the duration of the reauthorization period. Congress has consistently appropriated funds to the Commission below the Presidents authorization request, leaving the Commission year after year with inadequate resources to carry out its directive of investigating charges of citizens deprived of their civil rights, monitoring the enforcement of federal civil rights laws, and serving as a national clearinghouse for information related to discrimination. With no specified funding level, the proposed legislation increases the possibility that Congress will continue its pattern of underfunding an important and critical component of this nations goal of eliminating discrimination in all its ugly forms.

Moreover, there is no indication that the Majority is prepared to support increased funding for the Commission as requested in the Presidents fiscal year 1999 Budget. The Majority remains noncommittal on the appropriateness of the Presidents request of $11 million funding request. However, each year, the Congress continues to underfund the Commission. Last year, the Commission requested $11 million, but was only appropriated $8.75 million.

While increased Congressional oversight over the Commission may be warranted, it is unreasonable for the Committee to place additional burdens on the Commission and yet continue to overlook the need for full funding of the Commission. It is wholly unfair to the Commission and to

the American people who expect and deserve a strong federal role to combat discrimination to have the Commission constantly under the obligation of responding to the many requests made by the Majority and others, but without any provision for the funds necessary to perform its duties effectively.

The Majority has consistently focused on the problems associated with enforcement of our civil rights laws and insists that discrimination is no longer the problem it was 30 years ago. However, there is no question that the need for the Commission is greater than ever before. Discrimination continues to be a persistent problem in American society, and the role of the Civil Rights Commission plays a crucial part in fighting it. Instead of continually scrutinizing perceived defects in remedies to discrimination, we need to examine the persistent, invidious, intractable and often disguised nature of race and gender discrimination that is an undeniable fact in America today. This is what the U.S. Commission on Civil Rights was established to do, and Congress has an obligation to provide it with the necessary resources to do so.

John Conyers,

Ranking Member.

## D. Senate Report 103-227: Report on Legislative Activities of the Committee on Labor and Human Resources

Committee Reports

103d Congress

Senate Rept. 103-227

*103 S. Rpt. 227*

REPORT ON LEGISLATIVE ACTIVITIES OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES

COMMITTEE JURISDICTION

DATE: February 22, 1994. Ordered to be printed

SPONSOR: Mr. Kennedy, from the Committee on Labor and Human Resources, submitted the following

REPORT

(Pursuant to section 136 of the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, as amended)

TEXT:

...S. 1848).

P.L. 102-166 (enacted 11/21/91), Civil Rights Act of 1991 (S. 1745).

P.L. 102-167 (enacted 11/26/91), to extend the United States Commission on Civil Rights (H.R. 3350).

P.L. 102-168 (enacted 11/26/91), Health Information, Health Promotion, Vaccine Injury Compensation Amendments of 1991 (H.R. 3402).

P.L. 102-173 (enacted 11/...

## II. Congressional Record

## A. November 6, 1991: U.S. Commission on Civil Rights Reauthorization Act of 1991

Congressional Record -- House

Wednesday, November 6, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 9416*

REFERENCE: Vol. 137 No. 163

TITLE: U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

TEXT: **[*H9416]** The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and concurring in the Senate amendment to the bill, H.R. 3350.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and concur in the Senate amendment to H.R. 3350, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were -- yeas 420, nays 7, not voting 6, as follows:

(See Roll No. 378 in the ROLL segment.)

**[*H9417]** Mr. HERGER changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

[Roll No. 378]

YEAS -- 420

| | | |
|---|---|---|
| Abercrombie | Ackerman | Alexander |
| Allard | Anderson | Andrews (ME) |
| Andrews (NJ) | Andrews (TX) | Annunzio |

| | | |
|---|---|---|
| Anthony | Applegate | Archer |
| Aspin | Atkins | AuCoin |
| Bacchus | Baker | Ballenger |
| Barnard | Barrett | Barton |
| Bateman | Beilenson | Bennett |
| Bentley | Bereuter | Berman |
| Bevill | Bilbray | Bilirakis |
| Bliley | Boehlert | Boehner |
| Bonior | Borski | Boucher |
| Boxer | Brewster | Brooks |
| Broomfield | Browder | Brown |
| Bruce | Bryant | Bunning |
| Burton | Bustamante | Byron |
| Callahan | Camp | Campbell (CA) |
| Campbell (CO) | Cardin | Carper |
| Carr | Chandler | Chapman |
| Clay | Clement | Clinger |
| Coble | Coleman (MO) | Coleman (TX) |
| Collins (IL) | Collins (MI) | Combest |
| Condit | Conyers | Cooper |
| Costello | Coughlin | Cox (CA) |
| Cox (IL) | Coyne | Cramer |
| Cunningham | Dannemeyer | Darden |
| Davis | de la Garza | DeFazio |
| DeLauro | Dellums | Derrick |
| Dickinson | Dicks | Dingell |
| Dixon | Donnelly | Dooley |
| Doolittle | Dorgan (ND) | Dornan (CA) |
| Downey | Dreier | Duncan |
| Durbin | Dwyer | Early |
| Eckart | Edwards (CA) | Edwards (OK) |
| Edwards (TX) | Emerson | Engel |
| English | Erdreich | Espy |
| Evans | Ewing | Fascell |
| Fawell | Fazio | Feighan |
| Fields | Fish | Flake |
| Foglietta | Ford (MI) | Ford (TN) |
| Frank (MA) | Franks (CT) | Frost |
| Gallegly | Gallo | Gaydos |
| Gejdenson | Gekas | Gephardt |
| Geren | Gibbons | Gilchrest |
| Gillmor | Gilman | Gingrich |
| Glickman | Gonzalez | Goodling |
| Gordon | Goss | Gradison |
| Grandy | Green | Guarini |
| Gunderson | Hall (OH) | Hall (TX) |

| | | |
|---|---|---|
| Hamilton | Hammerschmidt | Hansen |
| Harris | Hastert | Hatcher |
| Hayes (IL) | Hefley | Hefner |
| Henry | Hertel | Hoagland |
| Hobson | Hochbrueckner | Holloway |
| Horn | Horton | Houghton |
| Hoyer | Hubbard | Huckaby |
| Hughes | Hunter | Hutto |
| Hyde | Inhofe | Ireland |
| Jacobs | James | Jefferson |
| Jenkins | Johnson (CT) | Johnson (SD) |
| Johnson (TX) | Johnston | Jones (GA) |
| Jones (NC) | Jontz | Kanjorski |
| Kaptur | Kasich | Kennedy |
| Kennelly | Kildee | Kleczka |
| Klug | Kolbe | Kolter |
| Kopetski | Kostmayer | Kyl |
| LaFalce | Lagomarsino | Lancaster |
| Lantos | LaRocco | Laughlin |
| Leach | Lehman (CA) | Lehman (FL) |
| Lent | Levin (MI) | Levine (CA) |
| Lewis (CA) | Lewis (FL) | Lewis (GA) |
| Lightfoot | Lipinski | Livingston |
| Lloyd | Long | Lowery (CA) |
| Lowey (NY) | Luken | Machtley |
| Manton | Markey | Marlenee |
| Martin | Matsui | Mavroules |
| Mazzoli | McCandless | McCloskey |
| McCollum | McCrery | McCurdy |
| McDade | McDermott | McEwen |
| McGrath | McHugh | McMillan (NC) |
| McMillen (MD) | McNulty | Meyers |
| Mfume | Michel | Miller (CA) |
| Miller (OH) | Miller (WA) | Mineta |
| Mink | Moakley | Molinari |
| Mollohan | Montgomery | Moody |
| Moorhead | Moran | Morella |
| Morrison | Mrazek | Murphy |
| Murtha | Myers | Nagle |
| Natcher | Neal (MA) | Neal (NC) |
| Nichols | Nowak | Nussle |
| Oakar | Oberstar | Obey |
| Olin | Olver | Ortiz |
| Orton | Owens (NY) | Owens (UT) |
| Oxley | Packard | Pallone |
| Panetta | Parker | Pastor |

| | | |
|---|---|---|
| Patterson | Paxon | Payne (NJ) |
| Payne (VA) | Pease | Pelosi |
| Penny | Perkins | Peterson (FL) |
| Peterson (MN) | Petri | Pickett |
| Pickle | Porter | Poshard |
| Price | Pursell | Quillen |
| Rahall | Ramstad | Rangel |
| Ravenel | Ray | Reed |
| Regula | Rhodes | Richardson |
| Ridge | Riggs | Rinaldo |
| Ritter | Roberts | Roe |
| Roemer | Rogers | Rohrabacher |
| Ros-Lehtinen | Rose | Rostenkowski |
| Roth | Roukema | Rowland |
| Roybal | Russo | Sabo |
| Sanders | Santorum | Sarpalius |
| Savage | Sawyer | Saxton |
| Schaefer | Scheuer | Schiff |
| Schroeder | Schulze | Schumer |
| Serrano | Sharp | Shaw |
| Shays | Shuster | Sikorski |
| Sisisky | Skaggs | Skeen |
| Skelton | Slattery | Slaughter (NY) |
| Smith (FL) | Smith (IA) | Smith (NJ) |
| Smith (OR) | Smith (TX) | Snowe |
| Solarz | Solomon | Spence |
| Spratt | Staggers | Stallings |
| Stark | Stearns | Stenholm |
| Stokes | Studds | Sundquist |
| Swett | Swift | Synar |
| Tallon | Tanner | Tauzin |
| Taylor (MS) | Taylor (NC) | Thomas (CA) |
| Thomas (GA) | Thomas (WY) | Thornton |
| Torres | Torricelli | Towns |
| Traficant | Traxler | Unsoeld |
| Upton | Valentine | Vander Jagt |
| Vento | Visclosky | Volkmer |
| Vucanovich | Walker | Walsh |
| Washington | Waters | Waxman |
| Weber | Weiss | Weldon |
| Wheat | Whitten | Williams |
| Wilson | Wise | Wolf |
| Wolpe | Wyden | Wylie |
| Yates | Yatron | Young (AK) |
| Young (FL) | Zeliff | Zimmer |

NAYS -- 7

| | | |
|---|---|---|
| Armey | Crane | DeLay |
| Hancock | Herger | Sensenbrenner |
| Stump | | |

NOT VOTING -- 6

| | | |
|---|---|---|
| Dymally | Hayes (LA) | Hopkins |
| Martinez | Sangmeister | Slaughter (VA) |

## B. July 30, 1992: 1991 USCCR Reauthorization Bill and Debate

Congressional Record -- House

Thursday, July 30, 1992

102nd Cong. 2nd Sess.

*138 Cong Rec H 7002*

REFERENCE: Vol. 138 No. 110

TITLE: DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED APPROPRIATIONS ACT, 1993

SPEAKER: Mr. ALEXANDER; Mr. BERMAN; Mr. BOEHLERT; Mr. BROWN; Mr. BURTON of Indiana; MR. DICKS; MR. DOOLEY; Mr. EARLY; MR. EMERSON; Mr. ESPY; MR. FAZIO; Mr. GREEN of New York; MS. HORN; Mr. HORTON; Mr. HOYER; MR. HUGHES; Mr. KOLBE; Mr. KOLTER; Mr. McDADE; Mr. MILLER of Washington; Mrs. MORELLA; MR. OWENS OF UTAH; Mr. PANETTA; Mr. REGULA; Mr. ROGERS; Ms. ROS-LEHTINEN; Mr. SCHUMER; Mr. SMITH; Mr. SMITH of Iowa; MR. SMITH OF NEW JERSEY; Mr. STUDDS; MR. SWIFT; Mr. VALENTINE; Mr. VISCLOSKY; Mr. WALKER; Mr. WHITTEN

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the House on the floor.

**[*H7002]** IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5678) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes, with Mr. Brown in the chair.

The Clerk read the title of the bill.

By unanimous consent, the bill was considered as having been read the first time.

The Chair recognizes the gentleman from Iowa [Mr. Smith] for 1 hour.

Mr. SMITH of Iowa. Mr. Chairman, for purposes of general debate on this bill, I yield 30 minutes to the gentleman from Kentucky [Mr. Rogers], and I ask unanimous consent that he be permitted to control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. SMITH of Iowa. Mr. Chairman, I yield such time as he may consume to the chairman of the full committee, the gentleman from Mississippi [Mr. Whitten].

(Mr. WHITTEN asked and was given permission to revise and extend his remarks.)

Mr. WHITTEN. Mr. Chairman, our subcommittee chairman, the gentleman from Iowa [Mr. Smith], and the ranking minority member, the gentleman from Kentucky [Mr. Rogers], and members of this subcommittee have done a fine job in putting together a good bill. I commend my fellow subcommittee members for their effort and rise in support of the bill.

This bill provides for the major crime fighting and drug enforcement agencies of the Government -- the Federal Bureau of Investigation, the Drug Enforcement Administration -- and for the prison system and the judiciary. While we may not provide all some would like for these important programs, we did the best we could under the budget ceiling.

The bill also includes funds for economic development and for small business assistance. We need these programs to help get our economy moving again.

Mr. Chairman, again I commend the gentleman from Iowa [Mr. Smith] and the gentleman from Kentucky [Mr. Rogers], along with their associates; for developing this bill. This is a good bill, and I urge it be adopted.

Mr. Chairman, today also represents an important milestone for this House -- for this bill is the last of the 13 regular 1993 appropriations bills to be considered by this body.

Mr. Chairman, we all can take great pride in the work of the 59 members who serve on the Committee on Appropriations, along with our fine staff. All the members and staff of our committee put in extremely long hours and give much time and thought to the difficult decisions we must make. And they do it with little fanfare.

Mr. Chairman, our Committee began holding hearings on January 23 -- 6 days before the budget was submitted. We took testimony from over 5,300 witnesses during 246 days of hearings. Our bills are below our allocations again this year. This continues our record of being a total of $188.8 billion below the total requested by Presidents since 1945 while, at the same time, providing for important national programs that are essential to the well being of our country.

Mr. Chairman, I think it is a credit to the fine members of your Committee on Appropriations and to all our colleagues in the House who have been cooperative in believing us in getting the job done. I also want to thank the leadership **[*H7003]** for their cooperation. We have tackled the issues and once again brought bills to the floor that, in total, have been below the President's 1993 budget request by $18.9 billion, have been below the total of the 1993 statutory budget caps by $20.7 billion, and have been below the 1993 congressional total discretionary budget allocation -- the 602(a) allocation -- by $8.9 billion.

At the same time, our bills are taking care of the most vital needs for our country.

Appropriations bills invest in the future of America through programs which help our economy grow such as highway construction, airports, bridges, water and sewer facilities, rural electrification, housing and community development grants, dams and harbors, and many other important capital investments.

Appropriations bills enable our country to look to a brighter future through science and space research, development of new and more efficient energy sources, research of oceans and our climate, development of better strains of plants and animals for our agricultural base, support of our basic science and mathematics education programs, and development of new technology to keep America a leader into the 21st century.

Appropriations bills enable us to better protect our people's health through cancer research, AIDS research, child immunization programs, heart research, and many other important programs. Our bills take care of our country's nutrition needs through the WIC programs, FDA research and regulation, and many other important efforts.

Mr. Chairman, appropriations bills enable us to protect our environment through the cleanup programs of the EPA, and many research efforts to identify and eliminate hazardous materials.

Appropriations bills also provide valuable support for education -- all the way from preschoolers through the Head Start Program to providing financial support to postgraduate students. Our bills also support the retraining of our work force as our economy continues to change and we have to make adjustments.

Appropriations bills, such as the bill we bring to the floor today, fight crime and continue the war on drugs.

Appropriations bills provide for a strong defense of our country, particularly by stressing proper training and a strong guard and reserve.

Appropriations bills help protect and develop our Nation's parks and natural resources which are the pride of all Americans.

Mr. Chairman, in addition to the 13 regular appropriations bills, we have completed action on a $8.2 billion rescission bill, a $1.1 billion dire emergency supplemental bill, and a regular supplemental bill.

Mr. Chairman, I am proud of the work we have done, and I wish to thank all my colleagues for their cooperation and understanding. Again, I refer to what we have done in our appropriation bill for the service of the people of this Nation.

Year after year the hard decisions are made and the work gets done. I want to take this time to commend all the members and staff of the Appropriations Committee -- on both sides of the aisle -- for their hard work in producing all these appropriations bills. They do a fine job.

I also want to thank the Members of the House for their support. I particularly want to thank my friend, the gentleman from Kentucky [Mr. Natcher] for his special support this year.

Again, at this time I wish to thank the leadership and the staff of the Committee on Appropriations for their cooperation and help, which have enabled us to continue to do a good job. We have stayed below the budget; we have tried to meet the basic needs. We have held appropriation hearings and used the expert knowledge of our members and our staff to produce what I consider a very good bill, while keeping the pace set by our leaders.

Mr. Chairman, I thank all of the Members who are listening to us. We have a great country and we are trying to do our part to see that it continues that way. From a grateful heart, I thank them for their cooperation in doing an important job that means so much to all of us.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all I want to commend all of the members of the committee and the staff for their work on this bill. This has been the most difficult bill we have ever handled since I have been subcommittee chairman, and in fact, in my memory. This is the last appropriations bill to be

considered by the House, and this bill is within the 602(b) allocations, even though the allocations are very, very low. It is all within the allocations.

This bill is the last one because it was so difficult to mark up. On an overall basis, the domestic discretionary accounts in here are only 93 percent of the level necessary to maintain services at the fiscal year 1992 level, plus a maximum of 25 percent of the program increases that OMB has approved for special needs.

That does not mean that I think that all of the requests were not all necessary or that the committee did not think so. I think that many of those special needs were justified, and OMB was justified in approving them, but we just simply do not have the money within our allocation to fund them.

The bill includes funding under three budget functions. It is under the defense function, the international function, and the domestic function. Those have walls between them under the summit agreement that do not permit transfer of funds between them.

The funding under the defense function in this bill is essentially the amount that they need.

Within the international function, there is a decrease from the administration's request of $42,934,000.

It is over the fiscal year 1992 level, but changes and shifts in the world situation mean we need more diplomatic services now in place of some of the military services we had before. We have new relationships with the new countries of the former Soviet Union and Eastern Europe and new U.N. needs, new exchange programs, and we think that they are justified.

It is the programs under the domestic functions that get hit very, very hard. In the programs under the domestic functions in this bill we are $551,533,000 below the fiscal year 1992 level. We are $1,440,214,000 below the request of the administration.

There are some exceptions to this 93 percent of current services rule. We were able to increase some of the crime and drug programs, not such as was requested, but we got the FBI to 98 percent of current services, DEA to 95 percent, and the Federal prison systems' salariesand expenses accounts to 95 percent. And I might say that there are five new prisons to be opened, but we cannot open them all within the money that is in this bill. We are assuming that some of them will not be opened until later in the fiscal year. But this is just an example of why you cannot hold to last year's dollar level when you have new prisons coming on line and they need personnel to operate them.

The bill restores a few of the programs which are annually left out of administration proposals -- budget items like economic development programs, coastal preservation, environmental programs under NOAA, the Regional Information Sharing System that helps local law enforcement needs, juvenile justice programs that deal with juveniles and public telecommunications facilities grants. But these are things that the House has voted on time and time again that they wanted, and this is a very stringent bill.

But I might explain that the reason we had to be so far below the administration's budget request is that in submitting their budget request they also assumed that we could increase fees and taxes by about $4 billion in the House, which the House is not about to do. They assume some other things. The budget resolution followed that, and it assumed some of the same kinds of things, the so-called administrative changes, and savings, and also some fees that cannot be levied. Both raised expectations on some of these programs we would like to increase up to the administration's level.

But we are just simply not able to do it in this bill. We have a very stringent bill. There will be RIF's in some of the departments under this bill. I cannot **[*H7004]** imagine any kind of amendment to cut this bill that would be justified.

Mr. Chairman, I reserve the balance of my time.

Mr. ROGERS. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ROGERS asked and was given permission to revise and extend his remarks.)

Mr. ROGERS. Mr. Chairman, the Commerce-Justice-State appropriations bill for 1993 is a significant piece of legislation in two ways.

First, this is the last of the 13 general spending bills our Committee brings to the floor this year. It closes a chapter on the need to get essential services of the Federal Government primed for next year.

Second, it opens a new chapter on Federal spending in very, very austere times. You've heard 12 chairmen and ranking members spell out the impact of the Budget Act -- and the spending caps -- on many important programs.

Well, this is the final exhibit of what this committee, and the Congress must do -- and can do -- to spend less when times are hard.

And these are hard times, Mr. Chairman.

This is a tough, lean bill. And I hope that as you consider what's in it, and any amendments to it, you'll bear in mind the following:

First, the bill is $1.3 billion -- over 8 percent -- below the President's request;

Second, this bill is below our allocation in budget authority -- by $1.1 billion;

Third, for domestic programs, the bill is $551 million below the 1992 levels. That is below 1992.

Having said all that, I will add this: Some of the cuts we had to make are not some of our prouder achievements.

But we have made tough decisions. And the approach used in the bill is an eminently fair one.

For domestic programs, the bill cuts 7 percent, right off the current services top, to achieve the administrative and overhead savings many Members want to see. These are reductions this bill already imposes.

The bill does not eliminate programs -- but it streamlines them, we hope, as a result of our actions.

And in preserving programs that both our administration, and many Members support, we ask that you support the bill.

Those programs include law enforcement, a fundamental function of the Federal Government.

The bill continues funding for the war on drugs, for the investigations and prosecution of bank and savings and loan crimes, an effort that's produced 2,300 convictions since 1988.

Earlier this year, the Director of the FBI and the Attorney General took bold action to shift 350 FBI agents from counterintelligence cases, and let'em loose on violent crime offenders as well as perpetrators of fraud in the health care industry.

The results are already in: Operation Goldbill and Operation Catscam are reining in abusers of a massive health care industry -- and hopefully deterring others from similar crimes. We want this work to continue under our bill.

This bill also makes every possible effort to help U.S. exporters -- thru trade promotion and import regulation programs in the Department of Commerce.

We have included money needed for the continued development of new technologies, and for the programs that will turn these technologies into valuable products.

For weather services operations, again we have made special efforts to keep vital stations open. And, we continue funding the weather service modernization -- for better and faster warnings of severe weather across the country.

The international programs in the bill fall under a separate spending cap. We've generally limited these to current services, except for new post openings and peacekeeping contributions.

Mr. Chairman, while I support this bill and intend to vote for it, I am extremely concerned about one particular provision.

The bill includes a provision for the Legal Services Corporation which I oppose, and which could very well result in this bill being vetoed.

The Legal Services Corporation was created to perform a basic and very important mission: To help poor people with civil legal problems. And for many years -- more than I like -- we've disputed and fenced over a number of restrictions and provisions covering the LSC, in our bill.

This year, though, we don't have to carry that ball. The House has passed an LSC authorization. The Senate is moving its own. The authorization process is working now, for the first time in about 14 years.

But this bill, Mr. Chairman, muddies that process up. It ties LSC funding to the terms of the House bill or an enacted authorization. If an authorization is not enacted into law, the House authorization -- not an enacted law -- would govern spending by LSC attorneys.

This is a controversial matter. And it does not belong in this bill, a year when we have an authorization moving. It's a move to draw the authorization process into our conference with the Senate, and I oppose that.

I also oppose the House-passed authorization, which among other things, allows LSC attorneys to use Federal funds or private funds on abortion-related litigation or lobbying. That is a big change and a big mistake. And, there are other problems with this authorization, as other Members would point out.

Now, Mr. Chairman, I do not want LSC lawyers taking time away from representing the poor, and devoting time to lobbying us, or anyone else, on abortion or redistricting, or LSC funding for that matter. But most of all, I want these issues settled by the authorizers, outside of the process for this bill.

If that doesn't happen, I predict trouble on the conference report for this bill, not to mention what happens when it hits the President's desk. And we can avoid that. We should avoid that.

So with that one admonition, Mr. Chairman, I support this bill and I ask all Members to support it, so we can move funding for these vital agencies.

In closing, let me thank the members of the subcommittee, who labored as part of a pretty grueling exercise this year. And let me thank Neal Smith, our chairman. He has been fair to all the Members, and we should appreciate the work he has put into the bill before you.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from Arkansas [Mr. Alexander].

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I wish to compliment the chairman and the ranking member and members of this committee for staying within the budget ceilings under very difficult circumstances. This is probably the most difficult bill that we have brought to the floor in terms of staying within the budget requirements imposed upon us by the Committee on the Budget.

It is with that thought that, of course, I support the bill, and I recommend to other Members that they do so with one exception. Because of the constraints we have on money and the need to find additional funds with which to support worthy projects, I will offer an amendment to strike $12.6 million that is within the bill for the purpose of continuing a useless cold war relic program known as TV Marti.

When I take time to explain the amendment, I will go into the various details of that amendment, but since time is limited, I thought I would introduce the fact that I planned to offer that amendment together with the gentleman from New Jersey [Mr. Andrews], the gentleman from Massachusetts [Mr. Atkins], the gentleman from Tennessee [Mr. Clement], the gentleman from New Jersey [Mr. Hughes], the gentleman from California [Mr. Miller], the gentleman from West Virginia [Mr. Mollohan], the gentleman from North Carolina [Mr. Neal], the gentlewoman from California [Ms. Pelosi], and the gentleman from Washington [Mr. Swift].

Essentially the objections that I have to TV Marti have nothing to do with **[*H7005]** the intended purpose of the program but with the practicality of the management of that program. The fact is that TV Marti simply does not work, it is a waste of money. We have obligated through this year, $46.4 million to broadcast to an audience that is not there to see the broadcasts because it operates from 3:30 a.m. to 6 a.m. and is jammed by the Cuban Government.

I believe that we need to conserve this $12.6 million in this budget to use for other worthy projects that we can see the immediate results from, that are at home that produce results here in the United States.

Furthermore, I would like to add one other quick fact. By continuing this useless spending on TV Marti, we are, in effect, reducing the availability of news and information by other broadcasts to Cuba, because TV Marti produces jamming from the Cubans which restricts the access of United States broadcasts to that island from other sources, namely, Radio Marti.

I will, of course, offer the amendment, together with supporting material, but let me conclude this remark by saying that the U.S. Advisory Commission on Public Diplomacy said in its report in 1991, " *** TV Marti *** is not cost-effective." That is the thrust of my argument. That is the reason for my amendment.

It has nothing to do with ideology. It has nothing to do with Castro. It has nothing to do with anything except trying to save money at a very important time.

Mr. ROGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. McDade], the very able and distinguished ranking member of the full committee.

(Mr. McDADE asked and was given permission to revise and extend his remarks.)

Mr. McDADE. Mr. Chairman, I thank the gentleman for yielding me this time and for his kind introduction and recognition.

Mr. Chairman, I rise in support of the bill and want to offer my sincere and deep commendation to the chairman of the committee, the gentleman from Iowa [Mr. Smith], who has done such a super job on a very difficult bill. He and my dear friend from Kentucky have worked hand in hand to bring this bill here today under very difficult circumstances. You have heard them say it and, I want to underline it. All the members of this subcommittee have worked extraordinarily to bring this bill before you today. It is a bill that all of you can support with pride.

It is well under the 602's and, as has been mentioned, it is below what was available for last year.

I hope everybody will support their work product enthusiastically, because that is what it deserves, enthusiastic support.

Mr. Chairman, I want to take a second to talk about a section in the accompanying report involving the special prosecutor's office.

In December 1987, the fiscal year 1988 Commerce, Justice appropriation was enacted, carrying a provision establishing a permanent indefinite appropriation for independent counsels.

During consideration of this bill, there was vast concern over the issue of fiscal responsibility and consequently, GAO was required to prepare and submit semiannual financial reviews to the House and Senate Appropriations Committees.

Last week, the Republican leader discovered that GAO has failed to submit one audit. On July 9, 1992, he wrote to GAO seeking copies of the audits that GAO is statutorily obligated to conduct. On July 20, 1992, GAO informed the leader that there were no such audits.

Somehow this thing has dropped through the cracks. There has not been one audit ever of these offices. As a result of having been noticed by the Republican leader, I offered language to the committee report, which was very graciously accepted by my dear friend from Iowa and my friend from Kentucky, which said to the GAO, "Look, we do not cast any stones, but get going. You have not done one audit since 1987." And so we said, "Get them all done by September 1, 1992."

As Members know, the statute is scheduled to expire unless reauthorized in December, and the Congress needs to have the information of its audit arm in order to make some important judgments about what we ought to do.

Now, I spoke with the General Accounting Office today.

They have now placed top priority on completing the required audits. But it may not be possible to meet the September 1, 1992, completion date. While they cannot, at this time, provide us with a firm completion date, the Acting Comptroller General has assured me: That they are expediting the work; that they will provide us with a work schedule as soon as possible, and will consult with us on the size of the effort, resources and timetable; and that they will report to us on their progress on September 1, 1992, with final reports to be provided no later than sine die adjournment of the Congress.

Mr. Chairman, this data must be available to the people's branch before we adjourn for the year so that we can make informed judgments and understand where we are on this issue.

Mr. Chairman, I urge support of the bill.

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. Panetta].

(Mr. PANETTA asked and was given permission to revise and extend his remarks.)

Mr. PANETTA. Mr. Chairman, I rise in support of this appropriations bill. This is the last of the 13 annual appropriations bills to be considered by the House.

It is $1.1 million below the level on discretionary budgetary authority and $57 million below the outlays set by the subdivision for the subcommittee.

Because this is the last appropriations bill, I also want to provide an overall wrap up on all of the appropriations bills. We have had a lot of discussion about additional savings. We have had some disputes as to whether we could achieve more savings, but I do want to tell Members that when it comes to comparing it to the budget resolution on BA, all of the appropriations bills are almost $6 billion below on BA and almost $4.5 billion below on outlays.

If you look at the spending caps set by the budget agreement, which adds another savings of about $11 billion on BA and $7 billion on outlays, the total below the spending caps established by the budget agreement of all of the appropriations bill is $17 billion below on budget authority and $11.5 billion on outlays.

I think that is a tribute to the committee and the House. It is a job well done, and I hope that the conference report reflects the same savings.

Mr. STUDDS. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Massachusetts.

Mr. STUDDS. Mr. Chairman, I thank the gentleman for yielding to me. It had been my intention to offer a revenue neutral amendment today on behalf of myself and my colleagues from California, Ms. Pelosi and Mr. Panetta, to correct some of the funding shortfalls for certain high priority coastal programs that are of substantial importance to us.

We also made a serious effort to identify reductions in certain low-priority areas within the NOAA account that could be used to offset the increases.

At the chairman's request, we have decided to refrain from offering the amendment, with the understanding that the chairman will make every effort to increase certain funding levels as the bill proceeds to conference.

The first area of our concern involves funding for the Coastal Zone Management Act. Is it correct that it was not the intent of the committee to cut funding for this program by 21 percent, and that the chairman will seek to restore funding for these grants to 1992 levels if at all possible?

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield, the gentleman is correct.

Mr. STUDDS. It is also terribly important to us that the Coastal Nonpoint Pollution Control Program, which the committee has provided less than last year's level, be more generously funded.

I would yield briefly to the gentleman from California [Mr. Panetta] if he wants to make an observation on that subject.

**[*H7006]** Mr. PANETTA. Mr. Chairman, I would wholeheartedly support the request by the gentleman from Massachusetts, and also ask the gentleman from Iowa [Mr. Smith] for some additional help to increase funding for the National Marine Sanctuaries Program during the conference committee.

As the gentleman knows, the Monterey Bay National Marine Sanctuary will be designated in September, and I believe that the gentleman from Massachusetts [Mr. Studds] has a large new sanctuary off Massachusetts.

We simply cannot adequately manage these areas without a bigger budget, and in this important year it is critical that we match or improve the President's request.

Is there any way that funding for this program can be raised to the $8 million requested by the President, during the conference?

Mr. SMITH of Iowa. Mr. Chairman, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Chairman, as the gentleman from California knows, we have a very limited allocation, but I certainly assure the gentleman that we will do all that is possible to secure additional funds for the Coastal Zone Management and Marine Sanctuaries Programs.

Mr. STUDDS. Mr. Chairman, if the gentleman from California will continue to yield, I want to thank the gentleman for that emphasis on the marine sanctuaries programs. As the gentleman indicated, not only for his coast in California, but for the Stellwagen Bank Marine Sanctuary about to be designated off the coast of Massachusetts. This is of vital importance to us.

Very briefly if I may in the time remaining, Mr. Chairman, we have suggested several offsets, including elimination of the National Ocean Planning Office, a reduction in surplus and unnecessary funding for implementation of an observer program that is due to expire in any case, a reduction in funding for the NMC computer acquisition, and eliminating the line item for Vents research, as the gentleman knows.

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield further, I believe we can accept $5 or $6 million of these proposed offsets, maybe not in the dollar amounts proposed for all of them, but we will use these suggestions when we go to conference on this bill. We do appreciate the gentleman pointing to areas of higher priorities and we will try to accommodate your recommendations.

Mr. STUDDS. Mr. Chairman, the committee chairman. I know I speak for my colleagues in saying that these are relatively modest sums. We know every dollar is scarce and counts. We have

done our best to be responsible in suggesting ways in which these can be offset. They are very important to the people of coastal America and we look forward to working with the chairman as this bill progresses.

Mr. PANETTA. Mr. Chairman, if the gentleman will yield further, I also want to join the gentleman from Massachusetts in thanking the committee chairman for his cooperation and really urging him to meet these requests as much as possible.

MR. CHAIRMAN, I RISE IN SUPPORT OF H.R. 5678, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS BILL FOR FISCAL YEAR 1993. THIS IS THE LAST OF THE 13 ANNUAL APPROPRIATIONS BILLS TO BE CONSIDERED BY THE HOUSE.

THE BILL PROVIDES $21.599 BILLION IN DISCRETIONARY BUDGET AUTHORITY AND $21.715 BILLION IN DISCRETIONARY OUTLAYS. I AM PLEASED TO NOTE THAT THE BILL IS $1.105 MILLION BELOW THE LEVEL OF DISCRETIONARY BUDGET AUTHORITY AND $57 MILLION BELOW THE OUTLAYS AS SET BY THE SUBDIVISION FOR THIS SUBCOMMITTEE.

AS CHAIRMAN OF THE BUDGET COMMITTEE, I PLAN TO INFORM THE HOUSE OF THE STATUS OF ALL SPENDING LEGISLATION, AND WILL BE ISSUING A "DEAR COLLEAGUE" ON HOW EACH BILL COMPARES TO THE BUDGET RESOLUTION.

I LOOK FORWARD TO WORKING WITH THE APPROPRIATIONS COMMITTEE ON ITS OTHER BILLS.

[Factsheet]

H.R. 5678, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1993 (H. Rept. 102-709)

The House Appropriations Committee reported the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for Fiscal Year 1993 on Thursday, July 23, 1992. This bill is scheduled for floor action on Thursday, July 30th, subject to a rule being adopted.

COMPARISON TO THE 602(B) SUBDIVISIONS

The bill provides $21.599 million in total discretionary budget authority, $1.105 million less than the Appropriations subdivision for this subcommittee. The estimated total discretionary outlays in the bill are $21.715 million, $57 million less than the subcommittee's outlay subdivision.

The bill provides $15.321 million of domestic discretionary budget authority, $751 million less than the Appropriations subdivision for this subcommittee. The bill is $10 million under the subdivision for estimated discretionary outlays:

COMPARISON TO DOMESTIC DISCRETIONARY SPENDING ALLOCATIONS

[In million of dollars]

NOTE: This table is divided, and additional information on a particular entry may appear on more than one screen.

Commerce, Justice, and State, the Judiciary, and

| | related agencies appropriations bill | |
|---|---|---|
| | BA | O |
| Discretionary | 15,321 | 15,625 |
| Mandatory n1 | 661 | 654 |
| Total | 15,982 | 16,279 |
| | Appropriations Committee 602(b) subdivision | |
| | BA | O |
| Discretionary | 16,072 | 15,635 |
| Mandatory n1 | 661 | 654 |
| Total | 16,733 | 16,289 |
| | Bill over (+)/under(-) committee 602(b) subdivision | |
| | BA | O |
| Discretionary | -751 | -10 |
| Mandatory n1 | | |
| Total | -751 | -10 |

n1 Conforms to the Budget Resolution estimates for existing law.

Note. -- BA -- New budget authority; O -- Estimated outlays.

The bill provides $5,619 million of international discretionary budget authority for the State Department and related activities, $76 million less than the Appropriations subdivision for this subcommittee. The bill is $19 million under the subdivision for estimated discretionary outlays:

COMPARISON TO INTERNATIONAL DISCRETIONARY SPENDING ALLOCATIONS

NOTE: This table is divided, and additional information on a particular entry may appear on more than one screen.

| | Commerce, Justice, and State, the Judiciary, and related agencies appropriations bill | |
|---|---|---|
| | BA | O |
| Discretionary | 5,619 | 5,492 |
| | Appropriations Committee 602(b) subdivision | |
| | BA | O |
| Discretionary | 5,695 | 5,511 |
| | Bill over (+)/under(-) committee 602(b) subdivision | |
| | BA | O |
| Discretionary | -76 | -19 |

The bill provides $659 million of defense discretionary budget authority for the ready reserve force within the Department of Transportation -- Maritime Administration, the radiation exposure compensation program, and the FBI, $278 million less than the Appropriations subdivision for this subcommittee. The bill is $28 million under the subdivision for estimated discretionary outlays:

COMPARISON TO DEFENSE DISCRETIONARY SPENDING ALLOCATIONS

[In million of dollars]

NOTE: This table is divided, and additional information on a particular entry may appear on more than one screen.

| | Commerce, Justice, and State, the Judiciary, and related agencies appropriations bill | |
|---|---|---|
| | BA | O |
| Discretionary | 659 | 598 |
| | Appropriations Committee 602(b) subdivision | |
| | BA | O |
| Discretionary | 937 | 626 |
| | Bill over (+)/under(-) committee 602(b) subdivision | |
| | BA | O |
| Discretionary | -278 | -28 |

The House Appropriations Committee reported the Committee's subdivisions of budget authority and outlays on July 21, 1992. These subdivisions are consistent with the allocation of spending responsibility to House committees contained in House Report 102-529, the Conference report to accompany H. Con. Res. 287, Concurrent Resolution on the Budget for Fiscal Year 1993, as adopted by the Congress on May 21, 1992.

The following are the major program highlights for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for FY 1993, as reported:

PROGRAM HIGHLIGHTS

[In millions of dollars]

| | Budget authority | New outlays |
|---|---|---|
| Justice Department: | | |
| Office of Justice Assistance | 627 | 138 |
| General administration | 114 | 103 |
| General legal activities | 385 | 335 |
| Japanese American reparation payments (mandatory) | 250 | 250 |
| Antitrust Division | 45 | 37 |
| U.S. attorneys | 730 | 642 |
| U.S. trustees | 57 | 49 |
| U.S. marshals | 314 | 282 |
| Support of U.S. prisoners | 230 | 138 |
| Organized Crime Drug Enforcement Task Force | 379 | 189 |
| Radiation exposure | 173 | 173 |

| | | |
|---|---|---|
| compensation | | |
| Federal Bureau of Investigations | 1,781 | 1,406 |
| Federal Bureau of Investigations (defense-related) | 130 | 98 |
| Drug Enforcement Administration | 703 | 527 |
| Immigration and Naturalization, salaries and expenses | 940 | 752 |
| Federal Prison System, salaries and expenses | 1,704 | 1,448 |
| Federal Prison System, buildings and facilities | 93 | 9 |
| Commerce: | | |
| National Institute of Standards and Technology | 251 | 161 |
| National Oceanic and Atmospheric Administration; operation, research and facilities | 1,452 | 871 |
| Bureau of the Census | 307 | 260 |
| International Trade Administration | 194 | 136 |
| Patent and Trademark Office | 89 | 49 |
| Economic Development Administration, programs | 235 | 24 |
| EDA, salaries and expenses | 26 | 24 |
| The Judiciary: | | |
| Court of Appeals, District Courts and other judicial services | 1,964 | 1,807 |
| Defender services | 215 | 204 |
| Court security | 81 | 53 |
| Administrative Office of the Courts | 46 | 41 |
| Federal Judicial Center | 18 | 14 |
| Federal Communications | 69 | 64 |

| | | |
|---|---|---|
| Commission | | |
| Equal Employment Opportunity Commission | 219 | 194 |
| Legal Services Corporation | 364 | 320 |
| Securities and Exchange Commission | 157 | 129 |
| Federal Maritime Administration | 426 | 265 |
| Small Business Administration, salaries and expenses | 234 | 172 |
| SBA Business Loans Program account | 367 | 247 |
| SBA Disaster Loans Program account | 159 | 105 |
| State Department: | | |
| Salaries and expenses | 2,171 | 1,780 |
| Acquisition and maintenance | 527 | 105 |
| Contributions to international organizations | 913 | 897 |
| Contributions for international peacekeeping activities | 456 | 392 |
| U.S. Information Agency | 1,142 | 801 |

Mr. SMITH of Iowa. Mr. Chairman, I do thank the gentleman, and I do want to mention that it is possible that maybe we can get a little higher allocation in the Senate and that would help us accommodate this matter.

Mr. ROGERS. Mr. Chairman, I yield 4 minutes to the gentleman from Arizona [Mr. Kolbe], a very hard-working member of our subcommittee.

Mr. KOLBE. Mr. Chairman, I thank the gentleman for yielding this time to me. I appreciate his remarks and I would return them both to the gentleman from Iowa [Mr. Smith] and the gentleman from Kentucky [Mr. Rogers] for the hard work and diligence they have done this year, as well as the staff on both sides of the aisle, in bringing what is a very difficult bill, the 1993 Commerce, Justice, State and judiciary appropriations bill to this floor.

As a member of the subcommittee, I sat through many hours of testimony this year from a variety of individuals.

We have already heard about how tough this bill is this year. Every domestic account is reduced, and cumulatively domestic spending in this bill is lower for fiscal year 1993 than it was in fiscal year 1992.

No other bill we will vote on this year will have such a disparity of interests. This bill addresses issues related to trade policy, the war on drugs, the end of the cold war, and the functioning of our courts.

In addition, several developments in the past year will actually increase costs for agencies covered in the bill.

The end of the cold war means additional post openings in former Soviet Republics which in turn increases expenses for the State Department. Also, the end of the cold war and the resulting increase in international cooperation has already required greater peacekeeping requirements for the United Nations and thus the United States.

As the only remaining superpower, I believe we have an obligation to try to keep the peace abroad. This bill does that.

The implementation of the Americans With Disabilities Act and other new laws will require increased legal and representation services from the Justice Department, the Equal Employment Opportunity Commission, and other agencies covered under this bill.

I am not completely satisfied with this bill this year -- but neither is the chairman or any of us who serve on the subcommittee. We had to make very difficult decisions this year, and I think for the most part they were made fairly.

In the domestic accounts, the bill is lower than last year by $551 million, and lower than the request by $1.44 billion.

As a result, all of the domestic accounts took a significant hit in their funding. This bill funds most domestic accounts at 93 percent of current services plus 25 percent of program increases.

These figures will cause significant problems for some agencies. For example, the U.S. Trade Representative's office will not be able to attend every trade negotiation abroad. In fact, Ambassador Carla Hills told me this morning that under this appropriation, her office will face drastic consequences. Options she is considering include a 20-day furlough for all U.S. Trade Representative employees, or a 20-percent reduction in travel to trade talks.

These options would devastate our nation's ability to participate in trade talks. The U.S. Trade Representative is currently in the midst of the NAFTA talks and the Uruguay round of the GATT negotiations. Regardless of the outcome of those talks, surely we would not want to jeopardize our seat at the table due to funding considerations. I would like to see a higher funding level for the U.S. Trade Representative's office.

Another example is the Bureau of Export Administration, which may have to let some people go if the figures in this bill today are the final figures for fiscal year 1993. These cuts will have a detrimental impact on export licensing and thus U.S. exports as a whole.

Other examples abound throughout this bill. The FBI, DEA, and other law enforcement agencies will not be able to provide needed program increases to combat illegal drugs. Some new prisons will not open.

I wish this were not the case, but this bill, like every appropriations bill this year, contains tough choices.

Let me highlight a few other areas of the bill that I believe are worth noting.

In the Justice accounts, I am pleased that we were able to fund the administration's $10 million request for the Weed and Seed Program.

Weed and Seed is the natural progression of the war on drugs. This war started with increased public awareness and more funding for law enforcement. It progressed with increased coordination between local, State and Federal law enforcement agencies, and increased cooperation between the United States and our Latin American neighbors to target the production, shipping, and peddling of deadly narcotics.

Weed and Seed will tie together the complicated relationship between supply and demand. While the weed component will continue to bolster law enforcement, the seed component will provide assistance in addressing the underlying economic and social problems that lead to drug use and dependency.

I believe it is too early at this stage to declare Weed and Seed a success -- but I do believe it is a significant initiative that deserves support from Congress.

I also support report language accompanying the bill that directs the Immigration and Naturalization Service to use additional reimbursement moneys from the examinations fee account for 100 additional land border inspectors.

This past year, INS has requested a total of 500 additional Border Patrol agents but not one additional inspector. However, during testimony before our subcommittee, Commissioner McNary admitted that INS was at least 300 inspectors understaffed at the southwest border. Given the booming trade with Mexico, and the promise of a North American Free-Trade Agreements, I would strongly urge the INS to reorder its priorities.

Illegal aliens are a problem. But the primary mission of the INS is to facilitate legal immigration and legal border crossings. I hope INS will remember this when its budget for fiscal year 1994 is submitted next year.

The Federal Bureau of Investigation will receive a very tight funding allocation under this bill. I am not sure if the Bureau will be able to fund program increases.

I would urge the Bureau, however, to continue to take all necessary action to combat health care fraud. Billions of dollars in health care fraud robs this Nation of vital resources to provide insurance and care for needy Americans.

Attorney General Barr and Director Sessions earlier this year allocated additional resources to this effort by shifting agents from foreign counterintelligence efforts.

I lent my wholehearted support to this effort. In addition, I introduced legislation to provide Federal law enforcement with asset seizure and forfeiture authority to assist in combating health care fraud.

I believe my bill, combined with increased resources from the Justice Department, will go a long way toward eradicating this $40 to $120 billion a year problem.

Also in the Justice account is an appropriation you will not see. That is the permanent indefinite appropriation for the Independent Counsels.

Essentially, permanent indefinite means that the independent counsels can basically spend whatever they want with no accountability, either by Congress or the executive branch.

**[*H7008]** And spend they have.

The most notorious independent counsel is Lawrence Walsh, who is on a witch hunt that will not end until President Reagan is forced to defend himself in the Walsh star chamber.

According to figures I have from the Justice Department, Lawrence Walsh has directly or indirectly cost the U.S. taxpayer more than $40 million since fiscal year 1987.

Compare that to some other independent counsels, such as the Adams Counsel that has been investigating the HUD scandal since fiscal year 1990. Arlin Adams has spent only $3.4 million, less than 10 percent of the Walsh total.

In rent costs alone, Lawrence Walsh has spent $5.6 million for his plush office in Columbia Square on 13th Street.

And when asked how many lawyers he knew how to hire when the Counsel was created, in 1988 he said, "Well, you pick a number from 1 to 10 -- I picked 10!"

Lawrence Walsh has perpetrated fraud on the American public, and this Congress has done nothing to stop it.

I went to the Rules Committee with an amendment to this bill to address the independent counsel statute -- which, my colleagues should know -- expires on December 15, of this year.

My amendment had four parts:

First, it repealed this disastrous permanent indefinite appropriation that has allowed Lawrence Walsh to spend more than $40 million.

Second, my amendment said that no funds could be spent by an independent counsel after September 15, unless the Comptroller General complies with the 1987 law establishing the permanent indefinite appropriation.

That law says,

The Comptroller General shall perform semiannual financial reviews of expenditures from the independent counsel permanent indefinite appropriation, and report their findings to the Committees on Appropriations of the House and the Senate.

This reporting requirement has never been complied with by GAO.

Minority leader Michel recently wrote to the Comptroller General requesting that information. Essentially, his request was disregarded.

Third, the amendment said that no additional independent counsels could be appointed after September 15, unless the GAO completes its reviews.

If no new moneys can be spent due to lack of GAO compliance, then it makes no sense to appoint still more independent counsels until GAO complies with the law.

Finally, I included Congress in the list of those individuals covered by the law.

The same principle that guided the creation of the independent counsel for the executive branch is applicable to the Congress. Investigations of wrongdoing within government should be conducted independently of any politics that may interfere.

This year especially has proven that Congress is incapable of policing itself. This is a political body, and is thus not able to conduct a completely independent investigation of wrongdoing.

My amendment simply said that it is again time that Congress be subjected to the laws it passes.

The independent counsel statute expires on December 15. But, ironically, with a firm lead in the Presidential polls, Democrats who in years past led the charge for the independent counsel statute are suddenly getting cold feet about reauthorizing the independent counsel law.

I believe it is clear that the Democrats in Congress are waiting to see what the outcome of the election will be before deciding what to do with this law. This is a double standard that the so-called independent counsel statute cannot withstand.

My amendment would have given the Congress the opportunity to fully debate the statute before its expiration.

It was ruled out of order by the Rules Committee -- and understandably so.

I recognize and concede that the Commerce, Justice, State, and Judiciary appropriations bill is not the proper place to debate the independent counsel statute. But the Democrats left the Congress with few other options, and they are legislating in other areas of this bill. So I believe it was fair and just to have my amendment made in order.

Finally, Mr. Chairman, let me turn my attention to the international accounts in this bill.

The Senate has passed its version of the bill, and in doing so adopted what I believe is a very onerous amendment.

The Senate amendment would freeze administration costs for the Departments of Justice, Commerce, and State at the fiscal year 1992 level.

Under normal circumstances, I would not necessarily be opposed to such action. But, these are not normal circumstances. The State Department funds the conduct of foreign affairs out of its administration account, which receives a dramatic increase in this bill.

The reason for the increase is obvious. The breakup of the Soviet Union has required the State Department to move aggressively to open new posts in the Commonwealth of Independent States. In addition, other posts are required in Cambodia and Eastern Europe.

Our subcommittee chose to increase the State Department's administration of foreign affairs account by more than $80 million for this expressed purpose.

We had the international account allocation to afford this increase, and I believe it is for a vital purpose.

Freezing this account at fiscal year 1992 levels would be very detrimental to this Nation's ability to conduct foreign affairs in these new-found states.

I was in Moscow at the beginning of this year, and I was astounded by the number of nationalities represented in the hotels and other places of commerce. Our new posts are needed so that the United States will not be left behind.

Mr. Chairman, I have many other comments about this bill. Suffice it to say that I will support it -- and gladly. Chairman Smith and Representative Rogers have again been exceedingly fair in the treatment of this bill.

Mr. SMITH of Iowa. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. Brown].

(Mr. BROWN asked and was given permission to revise and extend his remarks.)

Mr. BROWN. Mr. Chairman, I appreciate the courtesy of the gentleman from Iowa [Mr. Smith] in yielding this time to me for a brief colloquy, similar to the one which the gentleman just engaged in with the gentleman from Massachusetts [Mr. Studds].

I, and the ranking minority member of the Committee on Science, Space, and Technology, would like to respectfully request that in the event the opportunity arises in conference the House conferees would consider the priorities that our committee has established for two very important programs, the Weather Service modernization and the gore program of the Old Bureau of Standards, now called NIST. Basically, we would like the gentleman from Iowa to be flexible in conference, if he can, to help adjust some of the admittedly low figures that we have.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. BROWN. I yield to the gentleman from Pennsylvania to comment on this.

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding to me. I want to note for the Record that it is the statutory policy of the Congress, as stated in Public Law 102-245, the American Technology Preeminence Act, signed into law by President Bush earlier this year, and I quote:

It is the sense of the Congress that the intramural scientific and technical research and services activities of the National Institute of Standards and Technology should share fully in any funding increases provided to the Institute.

That policy is not yet fulfilled in this bill.

Mr. BROWN. Mr. Chairman, I agree with the gentleman from Pennsylvania [Mr. Walker] that while the external programs have been given an increase, the internal core programs have not received such increase, and I hope that the chairman will be willing to work for remedying that in conference.

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield further, I want to say that the committee fully agrees with both gentlemen, from the Committee on Science, Space, and Technology, and we will try to work with you. We think it is highly important that the United States be more competitive in the world market.

**[*H7009]** The core NIST research program and extramural research programs are both very important to us.

I do want to mention, however, that the core programs are funded at 93 percent of current services, plus more than 25 percent of requested program increases, while the external programs were only funded at 93 percent of current services, plus 25 percent of requested program increases.

Mr. BROWN. May I inquire if the distinguished ranking member of the minority concurs in the statement that the chairman has made?

Mr. ROGERS. It is my intention, I say to the gentleman from California [Mr. Brown] in conference to see to it that the core program gets increased as much as the grant programs. That would be my desire and goal.

Mr. BROWN. I thank the Chair and the ranking minority member.

Mr. Chairman, with regard to the Weather Service, we do note that the Service got a $6 million increase, but this is considerably less than the request, and it is considerably less than the Senate has put in their bill and less than the authorizing, of course.

We would hope that the matter can be improved in conference.

Let me yield to the gentleman from Pennsylvania [Mr. Walker] again on this point.

Mr. WALKER. I thank the gentleman for yielding.

I also mentioned that NOAA has requested an enormous increase in the Weather Service operations due to its burdensome interpretation of the certification process to transition from the old system to the new.

We, on the Science Committee, have tried to remedy that by clarifying the certification process in discussions with the Senate on the NOAA authorization bill.

While insuring public safety before offices are closed, it would not require the duplication now budgeted for by NOAA. With this legislative intent clarified, perhaps funding requirements could be adjusted to concentrate on modernization.

Mr. SMITH of Iowa. This clarification of the legislative intent on this matter should be helpful, and we share the authorizers' view as to the importance of the modernization of the Weather Service.

Again, we will try our best to cooperate with both of these gentlemen.

Mr. ROGERS. If the gentleman would yield further to me, I concur in what my chairman just said.

Mr. BROWN. Mr. Chairman, the gentleman from Pennsylvania [Mr. Walker] and I both want to thank Chairman Smith and ranking member Rogers for their consideration. We understand the difficulties that they face, and we merely want them to do the best that they can when they get to conference.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to another hard-working member of our subcommittee, the gentleman from Ohio [Mr. Regula].

(Mr. REGULA asked and was given permission to revise and extend his remarks.)

Mr. REGULA. I thank the gentleman for yielding. I think the previous speakers have covered this pretty well.

I just want to point out that we are entering a period of very challenging competitiveness in the world marketplace. Jobs are at stake. Some of the front-line troops in this effort are involved in this bill in terms of Federal agencies. I regret that we cannot do more for the U.S. Trade Ambassador and the USTR agency, because they have many treaty negotiations with which to deal, GATT, NAFTA, and so on. Likewise, Commerce is a front-line agency in the efforts to increase exports. One of the bright spots in our economic picture is the fact that we are still the world's No. 1 exporting Nation. We would like to enhance that as much as possible. It is these agencies that are out there providing advice, counsel, scientific evidence, to our exporting companies. So, hopefully,

in the process with the other body in conference, we can ensure that these agencies will be adequately funded.

The same thing is true of the International Trade Administration and the International Trade Commission because many dumping cases are presently pending. The steel industry alone has filed several dumping cases. These need to be dealt with expeditiously as a matter of equity and to ensure that American jobs are not put at risk by unfair trade practices.

Therefore it is important that they have adequate funding to meet those needs.

Likewise in another area, in the drug enforcement program, I think we are all convinced that you have to start at early age to discourage drug usage. We do fund in this bill the DARE Program, which has had a lot of success in teaching young people at an early age to dare to say "no."

Likewise the McGruff program is designed to get the young people away from and aware of the dangers of drugs. I think it is vitally important that we start on drug enforcement and understanding and education at an early age, and this bill helps to meet that challenge.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Indiana [Mr. Visclosky].

(Mr. VISCLOSKY asked and was given permission to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Chairman, I would like to engage the chairman of the subcommittee, the gentleman from Iowa [Mr. Smith], in a colloquy.

Mr. SMITH of Iowa. I would be glad to.

Mr. VISCLOSKY. Mr. Chairman, regarding the Coastal Zone Management Act [CZMA] funds provided in H.R. 5678, is it correct that the intent of the committee is to provide 93 percent of the fiscal year 1992 level of funding for the entire CZM grant program, including section 305 program development grants?

Mr. SMITH of Iowa. The gentleman is correct.

Mr. VISCLOSKY. Is it also true that only those coastal States that currently do not have coastal zone management programs in place are eligible for section 305 program development grants of up to $200,000, and that Indiana is one of those States?

Mr. SMITH of Iowa. The gentleman is correct. The State of Indiana qualifies.

Mr. VISCLOSKY. Is it also true that the conference report on the fiscal year 1992 Commerce, Justice, State, and Judiciary Appropriations Act provided up to $600,000 for section 305 grants and specified that three States -- Texas, Ohio, and Minnesota -- should receive those grants?

Mr. SMITH of Iowa. The gentleman is correct.

Mr. VISCLOSKY. Therefore, as of this year, it appears that of the six coastal States not participating in the coastal zone management program, only three, including Indiana, have not yet been designated to receive a section 305 grant.

Mr. SMITH. That is correct.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to a distinguished chairman of the full committee, the gentleman from New York [Mr. Green].

Mr. GREEN of New York. Mr. Chairman, at the heart of global efforts to prevent the spread of nuclear weapons is the International Atomic Energy Agency [IAEA], founded in 1957. Through a system of international safeguards, the IAEA seeks to ensure that nuclear material used in civilian programs is not diverted for nonpeaceful purposes. U.S. participation in IAEA is funded through this bill.

Over the last several years, the IAEA has been asked to assume ever greater responsibilities in the area of nuclear nonproliferation, including the dismantlement of Iraq's newly uncovered nuclear weapons program and the implementation of new safeguards agreements with South Africa, North Korea, Brazil, Argentina, Russia, Ukraine, and several other nations. In the area of safety, aging Soviet-built nuclear energy reactors throughout Eastern Europe demand immediate attention.

In addition, since the discovery of Iraq's clandestine nuclear weapons program, IAEA authority has been enhanced to allow for challenge or surprise inspections so that inspectors can go anywhere undeclared material or activities are suspected to exist. This type of inspection is expensive but essential if we are to hope to prevent a similar situation from developing such as occurred in Iraq.

Despite the growing and urgent mandate of IAEA, the agency's budget has been held to zero-growth since 1984. To compound IAEA's budget woes, the United States is perpetually delinquent **[*H7010]** in paying our assessed contribution, due to a practice begun years ago whereby we defer payment of our assessed contribution to international organizations until the beginning of each subsequent fiscal year. Thus, for calendar year 1991, we pay the IAEA at the beginning of fiscal year 1992. While this practice began essentially as a budget trick by OMB and the State Department to make 1 year's budget outlays look better, it has evolved into a practice that seriously hampers the ability of international organizations to operate effectively. In the case of IAEA, this is absolutely unacceptable, given the critical U.S. security and nuclear nonproliferation interests served by the IAEA.

Today, I simply urge OMB and the Department of State to pay the assessed contribution of the IAEA as promptly as possible at the start of the fiscal year to help it avoid a financial crisis. Many other nations have paid their assessment early so as to help IAEA balance its accounts for 1991 and 1992 despite the inability of the ex-Soviet States to pay their 12-percent share. It is my understanding that the other body has, in fact, increased the appropriation for our IAEA contribution by $15 million for 1993. I urge those who will be House conferees to take a careful look at this issue and to help the IAEA during this critical period for preventing the proliferation of nuclear weapons.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. Hoyer].

Mr. HOYER. I thank the gentleman for yielding to me, and I would like to engage the chairman in a colloquy.

Mr. SMITH of Iowa. I would certainly be pleased to participate.

Mr. HOYER. Like you, Mr. Chairman, I have been a strong advocate for funding the provision of information and technical assistance to implement the Americans With Disabilities Act.

ADA required that public accommodations be made accessible to people with disabilities by January 1992, and prohibits employers with 25 or more employees from discriminating against people with disabilities as of July 26.

Did the committee provide more than $11 million to the EEOC and the Department of Justice for fiscal year 1992 in the regular and 1991 supplemental appropriations bills, and was not this total funding level higher than requested by the administration?

Mr. SMITH of Iowa. The gentleman from Maryland is correct.

Mr. HOYER. Is it also the case that the subcommittee provided additional funds for ADA educational and technical assistance in the fiscal year 1992 supplemental appropriations bill approved by the House on July 28 as well as in the fiscal year 1993 appropriations bill now before the House?

Mr. SMITH of Iowa. The supplemental appropriations bill included an additional $1 million for EEOC. H.R. 5678 includes more than $8 million more for EEOC than in the current fiscal year, and the committee included these additional funds specifically to help cover increased workload associated in part with the ADA employment provisions.

Mr. HOYER. Mr. Chairman, I understand that the House Education and Labor Committee and the Subcommittee on Employment opportunities may consider proposals to establish a technical assistance revolving fund at EEOC. Do you expect that EEOC will have additional funds to support ADA activities if the administration pursues this option?

Mr. SMITH of Iowa. That is correct.

Additional funds would be available to EEOC, and the subcommittee would be supportive of this idea should the administration decide to pursue its enactment.

Mr. HOYER. Mr. Chairman, I want to thank the subcommittee for the considerable effort which they have made to fund ADA education and implementation, even though you were forced to make up serious shortfalls in other accounts in the budget request.

I would like to request, however, that the subcommittee provide additional funds to EEOC before the appropriations process is complete, as well as administrative authority and flexibility to ensure adequate resources are available to implement the ADA.

Mr. SMITH of Iowa. Mr. Chairman, I want to give the gentleman every assurance that the subcommittee regards the implementation of the ADA as a very high priority. We will make every effort, to the extent possible under our budget allocation, to provide these agencies with the resources and flexibility to fulfill their responsibilities under the ADA prior to completing the legislative process.

Mr. HOYER. Mr. Chairman, I thank the gentleman from Iowa [Mr. Smith] for his support and for his assurances.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the very able gentleman from New York [Mr. Horton].

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Chairman, I thank the gentleman for yielding and also for his work and the work of the distinguished chairman and ranking member in bringing this bill to the floor.

Mr. Chairman, I rise with concern for the level of funding for the International Trade Administration within the Department of Commerce. First, I would like to mention the results of a GAO report dated June 1992 and entitled "Export Promotion: A Comparison of Programs in Five

Industrialized Nations." The GAO report is one my colleague from Georgia, Doug Barnard, and I requested in order to find out how U.S. export promotions programs compare to our major European trading partners. The report found that we lag far behind our competitors in committing resources, dedicating staff, and offering financial support to smaller companies looking for the means to export.

A year and a half ago, France spent $1.99 per $1,000 for nonagricultural exports, Italy spent $1.77, and the United Kingdom spent $1.62 per $1,000 of nonagricultural exports. The United States, several times the population and economy of these European countries, spent only .59 cents per $1,000 of nonagricultural exports. I am afraid of what the GAO would have found had the study included Asian countries.

The International Trade Administration and, in particular, the branch called the U.S. and Foreign Commercial Service, serves the crucial function of helping nonagricultural U.S. businesses find markets overseas and export their services and merchandise.

My colleagues and I on the Government Operations Committee and on the Commerce, Consumer, and Monetary Affairs Subcommittee have examined for years the problems and progress of this small but vital entity in the Commerce Department. Earlier this year, in a letter signed by seven members of the Government Operations Committee, both Democrat and Republican, we asked appropriators to carefully consider the funding of our export promotion programs in Commerce. We noted the tremendous strides taken by the U.S. and Foreign Commercial Service in the past 2 years to become a more productive and efficient service to American firms.

If we pass the legislation as it currently stands, the International Trade Administration stands to receive a cut of over $13 million from last year's appropriation level. Since the U.S. and Foreign Commercial Service receives approximately half of the ITA budget, it is clear that a decrease in funding of this amount would force a drastic course of action. They would have to close offices domestically and abroad. And since over half of our foreign commercial offices are staffed by just one commercial officer, that means losing U.S. market representation for entire countries. And it means that we can forget all efforts to try and expand our markets into strategic areas such as Eastern Europe and the former Soviet Union.

Thankfully, I am not alone in my concern for funding for our trade promotion activities. I will quote from page 49 of the report accompanying this legislation:

The Committee recognizes that the trade development and promotion and import administration programs carried out by ITA are of the highest priority because of their impact on the continuing expansion of the U.S. position in the global economy. The Committee will do its best to direct additional resources to these high priority areas should additional amounts become available in the Subcommittee's overall allocation prior to final action on this appropriations bill.

I am encouraged that the chairman shares the view that an additional allocation **[*H7011]** is entirely appropriate given the global changes we have undergone in the past several years.

I am also encouraged that Members of the Senate also see the value in our trade promotion programs at Commerce. In their version of the Commerce appropriations bill, the International Trade Administration would get an increase to about $215 million, nearly covering the expenses for the programs the President requested.

Obviously, trade promotion is critical. No one can overemphasize the importance of exports as an essential means of expanding the economy, narrowing our trade gap and reducing the overall budget deficit. At a time when the United States is struggling to revitalize our economy and maintain a competitive edge with other industrialized countries, a strong export promotion program should be a priority. Slashing the budget of this vital arm of our Government provides a classic example of cutting off our nose to spite our face. Let us rethink and reevaluate the consequences of our action on this legislation.

I will close by strongly urging the full Committee on Appropriations to expand the subcommittee's allocation so as to be able to accommodate the Senate version of this bill. I believe it would be a mistake to do otherwise.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. Schumer].

(Mr. SCHUMER asked and was given permission to revise and extend his remarks.)

Mr. SCHUMER. Mr. Chairman, I rise in reluctant support of this bill. I say my support is reluctant not because of any deficiency on the part of the chairman of the Appropriations Subcommittee or Committee. To the contrary, I commend them on the fine job they have done under the circumstances. My reluctance is due to the fact that budget constraints prevent this bill from funding law enforcement and drug control to the extent that I, and the two chairmen, believe is necessary.

This is indeed an austerity appropriations bill. But the fact of the matter is that it is the best we can do. I am very pleased that within the constraints imposed by the budget agreement, the committee has fashioned a bill that puts special emphasis on law enforcement and drug control. The funding formula for the DEA, FBI, and organized crime drug enforcement, for example, is higher than most other accounts.

I would like it to be even higher. There also were a number of specific programs in drug abuse and crime prevention that I felt merited direct funding that could not be. That is unfortunate.

Let me make one last point. My colleagues on the other side of the aisle will say that this bill does not represent the increases in funding that the President requested. That may be true. But it is equally true that the President was able to recommend those overall increases by proposing substantial cuts in certain law enforcement accounts that he doesn't like, such as juvenile justice, knowing full well that Congress would reject these cuts and they would be funded.

Yesterday this House voted to spend billions on a space station that we do not need. Today, we vote on a bill that does not provide enough resources for critical needs at home. I will support the bill but look forward to the day when we get our priorities straight.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. Boehlert].

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I want to point out one deficiency in this bill, and that is the inadequate appropriation for the National Institute of Standards and Technology, or NIST. In NIST we have the sole Federal entity that actually helps advance American industrial technology directly. The ways NIST helps American industry are not speculation, they are fact. The ways that NIST

helps American industry are not indirect, they result from direct, specific research -- often with industrial funding -- on problems of immediate concern to American industry. And the ways that NIST helps American industry are not just supposition about the future, they have been proven by the work that NIST has been doing since its founding as the National Bureau of Standards way back in 1901.

What does NIST do? It performs in-house research on industrial problems; it promotes quality control through the Malcolm Baldrige Quality Award; it finances cutting-edge industrial research through the Advanced Technology Program; and it helps small businesses around the country modernize their plants through the manufacturing technology centers and the State Technology Extension Program. In short, NIST helps the entire range of American industry through traditional and innovative programs.

Put that under the heading of enhanced competitiveness for America.

So how could any Member of this House be against fully funding this essential laboratory? All of us who have voted to support scientific megaprojects because they might help American industry ought to support NIST. All of us who have opposed such projects because we doubted that such megaprojects would achieve our priority of building industrial competitiveness ought to support NIST. I don't think that leaves anyone out.

Yet the bill before us provides only about $251 million for the lab next year -- a whopping 19-percent cut from the President's proposal of about $311 million. Surely we can find a way to fund such a relatively inexpensive investment in the Nation's industrial future. If we don't, NIST will not only be unable to expand, it will be forced to lay off scientific personnel. Didn't we just vote for the space station because we wanted to avoid wasting such human capital, especially during a period of slow economic growth?

The other body has fully funded NIST, and I hope the conference will do the same. If we want to spinoff commercial advances instead of just spinning off tales about them, NIST is the place we should be putting our money.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. Valentine].

(Mr. VALENTINE asked and was given permission to revise and extend his remarks.)

Mr. VALENTINE. Mr. Chairman, I rise in support of H.R. 5678, the fiscal year 1993 Commerce, Justice, State, Judiciary, and related agencies appropriations bill. I would like to commend Chairman Smith for bringing this legislation forward.

I realize that fiscal constraints have made an especially strong impact on the House appropriations process this year. While I know the problems the Appropriations Committee has faced and understand why the choices have been made, I am disappointed that the proposed fiscal year 1993 funding levels for the programs of the Technology Administration are substantially below both the administration's request and the Science Committee's authorization.

For example, the appropriations proposed for the National Institute of Standards and Technology's important intramural scientific programs is $23 million below the administration's request, and $43 million below the Science Committee's authorization. This is of particular concern because NIST has a key role to play in furthering the economic competitiveness of U.S. industry.

NIST's research and standards development activities make possible American high-technology products manufactured with world-class precision.

Of equal concern is the proposed appropriations for the industrial technology for the industrial technology services appropriations, which is $19 million less than the administration's request, and $60 million less than the Science Committee's authorization.

With proper support, the advanced technology program could become a major civilian alternative funding source for advanced technologies, and the regional manufacturing centers could provide an outreach mechanism to help U.S. manufacturers compete successfully at home and abroad. Investment in these programs is vital to the future of our economy.

Also, we are disappointed in the lack of funding recommended for the upgrading of NIST's facilities. The 25-year-old Gaithersburg, MD, campus and the 35-year-old Boulder, CO, laboratory have proven to be sorely in need of renovation and modernization. At a minimum, the Science Committee **[*H7012]** supports the administration's request of $23 million for this project. Our authorization bill recommended $35 million for the facilities' upgrading.

I understand that the Senate this week has been able to be much more generous to NIST largely because its allocation for this appropriations bill was higher and provided more flexibility. I hope that the gentleman from Iowa and the other House conferees on this legislation will also be given the flexibility to fund these programs which are the seed corn for our high-technology future.

Although I realize that budgetary constraints must be considered, I also think we must come to grips with our competitiveness priorities before it is too late.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. Berman].

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Chairman, I rise in support of H.R. 5678, the Commerce-Justice-State appropriations bill for fiscal year 1993. The bill which is before the House today reflects a really first-rate job done by Chairman Smith and ranking member Rogers in reconciling competing demands with a constrained allocation. Many of the hard choices discussed in the abstract here on the House floor in recent weeks were in fact made in putting together this bill. The consequences in some cases will be painful, but I appreciate the hard work of the chairman and the subcommittee members in dealing with their extremely difficult situation.

For international affairs, this bill provides appropriations for the accounts authorized by Public Law 102-138, the fiscal year 1992-93 Foreign Relations Authorization Act, and Public Law 102-311, the International Peacekeeping Act of 1992. Both of these bills originated in the Foreign Affairs International Operations Subcommittee which I chair, and it is from this perspective that I rise in strong of the bill before us.

H.R. 5678 represents a responsible, budget-conscious response to truly extraordinary international affairs demands. With one notable exception, the fiscal year 1993 authorized totals for the accounts in question represented no more than current-services funding. For the aggregate of its international accounts excluding peacekeeping, H.R. 5678 is below authorized levels, and therefore below current services, by nearly $40 million.

The peacekeeping operations which this bill would make possible are of the utmost importance to the foreign policy of the United States. Having won the cold war, we ought to ensure that our victory produces a just and lasting peace. News reports from Sarajevo remind us daily of this critical need. Congress only last month passed the bill authorizing appropriation of these funds. This bill appropriates the needed dollars. Failure to do so will only compound the threat to international stability, and hence to our national security. Our taxpayers have invested trillions of dollars in our cold war victory; it is incumbent on us to protect their investment with payment of what amounts to a comparatively small insurance premium.

The great part of the funds appropriated will be used for the United Nations transitional authority in Cambodia [UNTAC], where the United Nations plan offers that country's only hope for political consolidation without further civil war. In the case of Yugoslavia, where a significant portion of the balance of the funds will be used, the consequences of continued civil war and suffering can only undermine whatever gains might have been made by the demise of communism.

The amounts in the bill for peacekeeping are consistent with the President's request, authorization ceilings, Budget Enforcement Act caps, and budget resolution stipulations. No emergency declaration, statutory, or procedural waiver is needed. This is not supplemental funding.

Neither is peacekeeping foreign aid, nor a contribution to the regular U.N. budget, but rather payment for services. The money is paid to the United Nations either as a pass-through directly to countries which contribute troops to peacekeeping forces, to offset a share of the costs of maintaining those troops, or directly to the United Nations for its peacekeeping costs.

Elsewhere, the bill provides vitally needed funds for new post openings in Eastern Europe and the former Soviet Union. A further $22.9 million has been reserved for post openings pending authorization, which Chairman Fascell expects to bring to the floor shortly. I cannot overemphasize the importance, to U.S. national security and business, of providing this minimal funding to establish a government presence in the newly independent former Soviet States.

Finally, I cannot conclude without thanking Chairman Smith, and his staff, for their part in what I feel has been an exceptional relationship between authorizers and appropriators in our case. The bill before us is scrupulous in its adherence to its underlying authorizing legislation for international affairs. The appropriators in this case have gone to great lengths to honor the authorizers' identification of foreign policy priorities. Chairman Smith and I, as well as our respective staffs, consulted regularly and constructively during both the authorization and appropriations processes. As a result of this two-way consultation, differences between the authorizing and appropriating bills are slight. The product of that 2-year relationship before us is a sound bill, a fiscally responsible bill, and I strongly urge my colleagues to support it.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Maryland [Mrs. Morella], a very able and hard-working member.

(Mrs. MORELLA asked and was given permission to revise and extend her remarks.)

Mrs. MORELLA. Mr. Chairman, I rise in support of the Commerce-Justice-State appropriations bill. I would like to commend Chairman Smith and Mr. Rogers for their leadership and efforts on behalf of this bill. In this very difficult fiscal climate, the Appropriations Committee has acted with fairness and deliberation.

However, I must draw attention to the funding level appropriated for one of our Nations's outstanding technical agencies, which is headquartered in my district -- the national Institute of Standards and Technology. I greatly appreciate that the chairman and ranking minority member of the subcommittee hold NIST in the same high regard as I do, and I know they have been working hard to minimize any adverse effects on NIST in this bill.

I am grateful for their special consideration. Through their efforts, NIST funding has been restored to bring its appropriation level above that provided by the committee's formula of 93 percent of current services and 25 percent of requested increases. Nevertheless, this funding level would impair NIST's ability to fully meet its mission. NIST extramural programs would be severely impacted, employees would be RIF'd, and modernization of vital laboratories in both Gaithersburg and Boulder, CO, would be delayed.

Under the reduced funding provided by this appropriation, NIST will find itself in the position of having to go forward with reduction-in-force in order to operate at the reduced levels and generate the necessary savings to comply with the appropriation level. Opportunities to move forward to support industrial quality control and productivity, and to support industry's ability to compete in international markets, will be lost as NIST activities are forced to move backward.

NIST's extramural programs will be severely impacted. It is unlikely that a planned competition under the Advanced Technology Program in fiscal year 1993 can be undertaken. And with the levels provided in this appropriation, NIST's contributions to the five existing and two new manufacturing centers will have to be cut.

Also, the committee was forced to cut maintenance funds for the NIST Gaithersburg and Boulder facilities, and the committee was unable to fund the request for badly needed renovations and modernization of those facilities. During the 25 years since NIST's Gaithersburg laboratories were completed, scientific laboratory facilities have changed dramatically. An independent architectural and engineering assessment of the NIST laboratories concluded that "the technical obsolescence at NIST is significant, near term, **[*H7013]** and extensive" and that the "overwhelming majority" of laboratory space at NIST "will fail to meet operational requirements of programs in the current decade." The deterioration of NIST facilities has already made it impossible for them to provide some United States manufacturers with services on a par with our Japanese and European competitors. And the deterioration of these facilities is continuing at an alarming rate.

Mr. Chairman, the Senate has just concluded consideration of their version of this bill and, due to differences in budget allocations, has been able to provide NIST with an increase above the President's budget request. I urge the chairman and ranking minority member to give every consideration during the House-Senate conference to accommodating the additional Senate increases NIST.

We simply cannot afford to let NIST drift into second-rate status. NIST is the only Federal laboratory explicitly charged with helping U.S. industry, it is one of our Government's most important instruments to bolster our international competitiveness, and it plays a critical role in our Nation's health and well-being. Unfortunately, the urgency of providing full funding for NIST's fiscal year 1993 budget request cannot be overstated.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Mississippi [Mr. ESPY].

(Mr. ESPY asked and was given permission to revise and extend his remarks.)

Mr. ESPY. Mr. Chairman, I would like to engage the chairman in a colloquy. While H.R. 5678 contains no new funds for the construction of Federal prison facilities, the committee's report recommends priority funding for the Yazoo City, MS, and Forrest City, AR, facilities should additional funds become available. I am pleased that the committee recognizes the regional economic impact that these facilities will have on the Lower Mississippi Delta region, reflecting the 1990 report of the Lower Mississippi Delta Development Commission.

Mr. Chairman, this area of Mississippi has an unemployment rate of 11 percent. The creation of 600 temporary construction jobs and 250 permanent jobs would have an enormous positive impact.

The Senate-passed version of this bill included $79.6 million for the Yazoo City facility and I believe the same amount of funds for the facility in Forrest City, AR. I would like to urge the chairman to favorably consider the Senate treatment of this matter.

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield, I fully appreciate the importance of this project to the constituents of the gentleman from Mississippi [Mr. Espy], and the Nation. Depending on the funding allocation we receive in the conference, I will attempt to do whatever I reasonably can to assure funding for this high-priority item.

Mr. ALEXANDER. Mr. Chairman, will the gentleman yield?

Mr. ESPY. I yield to the gentleman from Arkansas.

Mr. ALEXANDER. Mr. Chairman, based on the conversations we have had and what has happened in the other body, I would expect funds to be available for the construction in Yazoo City, MS, and Forrest City, AR. I can assure the gentleman I will work in conference to achieve that goal.

The CHAIRMAN. The Chair would inform the gentleman from Iowa [Mr. Smith] he has no time remaining. The gentleman from Kentucky [Mr. Rogers] has 5 minutes remaining.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Washington [Mr. Miller].

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Chairman, I want to highlight one area of funding in this bill which is urgently needed. This bill contains the United States assessed contribution to the International Atomic Energy Agency [IAEA]. However, our contribution is too little too late.

Concerns about nuclear proliferation grow. The Republics of the former Soviet Union and Eastern Europe desperately seek help on the safety of their nuclear powerplants. The IAEA is the only international agency with the capability and mandate to deal with these expanding problems.

But the IAEA has been held to a zero-growth budget for the last 8 years. Making matters worse, the Soviet Union was unable to pay its $20 million contribution for 1991, and it appears the former Soviet Republics of Russia, the Ukraine, and Belarus will be unable to pay their 1992 dues. These contributions account for over 10 percent of IAEA's funding.

As IAEA's funding sources decrease, its assignments have expanded. In the last year, new safeguard agreements, which mandate IAEA inspections of facilities, have been signed in Brazil, Argentina, and South Africa. These are not activities IAEA chooses to do, these are activities which IAEA must do as mandated by international treaty. And these are vitally important activities.

Further, countries in Eastern Europe and the former Soviet Union, ranging from Bulgaria to Lithuania to Russia, have asked for help in inspecting and making safe their nuclear power facilities. The United States has been supportive of conducting all of these urgently needed tasks. Clearly, the IAEA is needed now more than ever.

But the United States must back up its verbal support with financial support. To its credit, the administration has found between $1 and $2 million to give to IAEA in 1992. But this is not enough. The United States needs to increase its contribution to the IAEA. This bill contains our usual $47 million assessed contribution. But this payment comes 10 months into IAEA's fiscal year. The United States should pay its contribution immediately rather than waiting until the end of the year. We must get the United States back on schedule in paying its contribution.

In addition, the United States should increase its contribution, whether it be in this bill as part of our assessed contribution or in the foreign operations bill as part of our voluntary contribution. In fact, the President stated at the G-7 summit that the United States will support increases in the IAEA's safeguards budget. We must back that promise with real money.

Congress can also be helpful by passing this bill and sending it to the President in a timely manner. If we wait to send this bill to the President at the end of the session sometime in October, it will be too late. IAEA will be out of money by then. Congress and the President must act responsibly to ensure that nuclear proliferation is checked and dangerous nuclear powerplants are made safe or closed down.

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. Smith].

MR. SMITH OF NEW JERSEY. MR. CHAIRMAN, IT IS DEEPLY REGRETTABLE THAT THE BILL BEFORE US REVERSES A LONGSTANDING POLICY TO ALLOW LEGAL SERVICES CORPORATION GRANTEES TO USE PUBLIC AND PRIVATE FUNDS TO ENGAGE IN ABORTION-RELATED ACTIVITIES. THE COMMITTEE HAS UNWISELY JETTISONED THE RIDER WHICH HAS BEEN PART OF THESE APPROPRIATIONS BILLS SINCE 1986 WHICH WOULD PREVENT LSC GRANTEES FROM LITIGATING ABORTION CASES.

MOST LSC GRANTEES RECEIVE A SIGNIFICANT AMOUNT OF PRIVATE FUNDS AS WELL AS FEDERAL FUNDS. THESE FUNDS, IN THE TENS OF MILLIONS, ARE ALSO HELD TO THE SAME STANDARDS OF USE AS FEDERAL FUNDS BECAUSE THE CORPORATION WAS CREATED BY THE FEDERAL GOVERNMENT AND THE ACTIVITIES OF LSC GRANTEES ARE CARRIED OUT UNDER THE AUSPICES OF THE FEDERAL GOVERNMENT. SECTION 1010(C) OF THE LSC ACT EXPLICITLY STATES THAT THESE PRIVATE FUNDS "SHALL NOT BE EXPENDED BY RECIPIENTS FOR ANY PURPOSE PROHIBITED BY THIS TITLE." (42 U.S.C. § 2996I.)

IF THIS BILL WERE ENACTED, MR. CHAIRMAN, THE LEGAL SERVICES CORPORATION, AS A GOVERNMENT ESTABLISHED CORPORATION, COULD ONCE AGAIN ENGAGE IN LITIGATION TO OVERTURN STATE AND FEDERAL LAWS RELATED TO ABORTION.

UNDER THIS BILL, LSC GRANTEES WOULD BE ABLE TO USE PUBLIC AND PRIVATE FUNDS TO CHALLENGE PARENTAL NOTIFICATION AND PARENTAL CONSENT LAWS -- LAWS THAT ENJOY OVERWHELMING SUPPORT IN AMERICA.

UNDER THIS BILL, LSC GRANTEES COULD USE PUBLIC AND PRIVATE FUNDS TO CHALLENGE STATE LAWS REQUIRING INFORMED CONSENT FOR ABORTION.

UNDER THIS BILL, LSC GRANTEES COULD USE PUBLIC AND PRIVATE FUNDS TO CHALLENGE WAITING PERIODS FOR ABORTION.

UNDER THIS BILL, LSC GRANTEES COULD USE PUBLIC AND PRIVATE FUNDS TO CHALLENGE STATE AND FEDERAL CONSCIENCE CLAUSE LAWS WHICH PROTECT UNWILLING INDIVIDUALS AND INSTITUTIONS FROM BEING FORCED TO PARTICIPATE IN ABORTIONS.

**[*H7014]** UNDER THIS BILL, LSC GRANTEES COULD USE PUBLIC AND PRIVATE FUNDS TO CHALLENGE STATE AND FEDERAL HYDE AMENDMENT LAWS WHICH RESTRICT TAXPAYER FUNDING OF ABORTIONS.

CURRENTLY, THE LSC ACT WHEN COMBINED WITH THE FY92 APPROPRIATION'S RIDER PROHIBIT LSC GRANTEES FROM USING FEDERAL OR PRIVATE FUNDS FOR ABORTION-RELATED ACTIVITIES. THE LSC ACT STATES THAT LSC FUNDS MAY NOT BE USED FOR THE PROVISION OF:

LEGAL ASSISTANCE WITH RESPECT TO ANY PROCEEDING OR LITIGATION WHICH SEEKS TO PROCURE A NONTHERAPEUTIC ABORTION OR TO COMPEL ANY INDIVIDUAL OR INSTITUTION TO PERFORM AN ABORTION, OR ASSIST IN THE PERFORMANCE OF AN ABORTION, OR PROVIDE FACILITIES FOR THE PERFORMANCE OF AN ABORTION, CONTRARY TO THE RELIGIOUS BELIEFS OR MORAL CONVICTIONS OF SUCH INDIVIDUAL OR INSTITUTION. (42 U.S.C. § 2996F.)

THIS LANGUAGE, HOWEVER, WAS NOT SUFFICIENT TO STOP LSC GRANTEES FROM ENGAGING IN ABORTION-RELATED ACTIVITIES. AN EARLIER INTERPRETATION BY SOME GRANTEES WAS THAT, IF A WOMAN SOUGHT AN ABORTION FOR ANY REASON, IT WAS ASSUMED TO BE NEEDED AND THEREFORE "THERAPEUTIC". BECAUSE OF THIS BROAD LOOPHOLE, THE DEWINE-HUMPHREY AMENDMENT WAS ADDED TO THE FISCAL YEAR 1986 COMMERCE/JUSTICE/STATE APPROPRIATIONS BILL TO REINFORCE CONGRESS' ORIGINAL INTENT THAT LSC NOT ENGAGE IN ABORTION LITIGATION OF ANY KIND. THIS RIDER STATES:

NONE OF THE FUNDS APPROPRIATED UNDER THIS ACT TO THE LEGAL SERVICES CORPORATION MAY BE USED BY THE CORPORATION OR ANY RECIPIENT TO PARTICIPATE IN ANY LITIGATION WITH RESPECT TO ABORTION. ***

THIS RIDER WAS INCORPORATED BY REFERENCE IN THE CURRENT, FISCAL YEAR 1992 APPROPRIATIONS BILL.

H.R. 5678, AS REPORTED TO THE HOUSE BY THE COMMITTEE ON APPROPRIATIONS INCORPORATED A RIDER WHICH DOES NOT CONTAIN THE DEWINE-HUMPHREY AMENDMENT OR SIMILAR LANGUAGE RESTRICTING FUNDING FOR ABORTION-RELATED ACTIVITIES. RATHER, IT REFERENCES H.R. 2039, THE PENDING LSC REAUTHORIZATION LEGISLATION WHICH DOES NOT INCLUDE A RIDER RESTRICTING ABORTION ACTIVITIES. THUS, IF H.R. 5678 IS ENACTED IN ITS CURRENT FORM, LSC GRANTEES COULD BEGIN ENGAGING IN ABORTION-RELATED LITIGATION WITH BOTH PUBLIC AND PRIVATE FUNDS. WITH THE HUGE NUMBER OF

CASES EXPECTED AS STATES PASS WAITING PERIOD AND INFORMED CONSENT STATUTES, LSC SUPPORTED ABORTION LITIGATION REPRESENTS A BONANZA FOR THE ABORTION LOBBY. AND OF COURSE, MONEY DEVOTED TO THE PROMOTION OF BABY KILLINGS IS MONEY UNAVAILABLE FOR LEGAL SERVICES FOR THE POOR IN OUR NATION.

MS. HORN. MR. CHAIRMAN, I RISE TODAY TO NOTE THE FUNDING LEVELS FOR THE NATIONAL INSTITUTES OF TECHNOLOGY [NIST] IN THE BILL BEFORE US. THE TOTAL NIST FUNDING IN THIS BILL IS $250,869,000, CONSIDERABLY LESS THAN THE ADMINISTRATION'S REQUESTED LEVEL OF $310,677,000 AND MUCH LESS THAN THE $596,978,000 PASSED IN THE SENATE COMMERCE APPROPRIATION. IT IS ALSO FAR BELOW THE AUTHORIZED LEVELS OF $382 MILLION APPROVED BY THE SCIENCE, SPACE, AND TECHNOLOGY COMMITTEE.

THE TECHNICAL PROGRAMS AT THE NATIONAL INSTITUTES OF STANDARDS AND TECHNOLOGY, PARTICULARLY THE INDUSTRIAL TECHNOLOGY SERVICES SUCH AS THE ADVANCED TECHNOLOGY PROGRAM [ATP], THE MANUFACTURING TECHNOLOGY CENTERS, AND THE STATE EXTENSION PROGRAM, HAVE HELPED OUR NATION'S MANUFACTURING AND HIGH TECHNOLOGY FIRMS COMPETE IN THE GLOBAL MARKETPLACE. THEY ARE INDISPENSABLE TO CONTINUING PROGRESS IN THE CRITICAL TECHNOLOGIES OUTLINED BY EVERY PANEL CONVENED TO LOOK AT THE FUTURE OF U.S. COMPETITIVENESS.

AS RECOGNIZED BY IN THE APPROPRIATIONS COMMITTEE REPORT, "THE CORE AND EXTERNAL RESEARCH ACTIVITIES OF NIST ARE CRITICAL TO THE ENHANCEMENT OF U.S. MANUFACTURING TECHNOLOGIES AND GLOBAL COMPETITIVENESS." IF THESE PROGRAMS ARE CRITICAL TO COMPETITIVENESS, IT MAKES SENSE TO ENSURE THAT THEY ARE ADEQUATELY FUNDED. WE CANNOT AFFORD TO SHORTCHANGE INVESTMENT IN TECHNOLOGY AND MANUFACTURING. CONTINUED ADVANCES IN THESE AREAS ARE VITAL TO THE FUTURE COMPETITIVENESS OF OUR COUNTRY, AND THE PRODUCTS, QUALITY JOBS, AND HIGHER STANDARD OF LIVING THAT RESULT FROM WORLD-CLASS BASIC INDUSTRIES.

HOPEFULLY, THIS WILL BE REMEDIED IN CONFERENCE SO THAT SO WE DO NOT SHORTCHANGE INVESTMENTS IN OUR NATION'S COMPETITIVENESS.

MR. EMERSON. MR. CHAIRMAN, I RISE IN OPPOSITION TO THIS APPROPRIATIONS BILL. I AM PARTICULARLY OPPOSED TO THE PROVISIONS CONCERNING THE LEGAL SERVICES CORP. THIS BILL INCORPORATES REFERENCE TO A BILL WHICH HAS NOT EVEN BEEN ENACTED, ESSENTIALLY GIVING A BILL THAT HAS NOT BEEN ENACTED -- AND WHICH WILL NOT LIKELY BE ENACTED BECAUSE OF A LIKELY VETO -- THE FORCE OF LAW. THIS IS A QUESTIONABLE PRACTICE IN ITSELF. BUT I AM SPECIFICALLY CONCERNED WITH ONE EFFECT OF THIS BACK-DOOR LEGISLATING, THIS BILL WILL EFFECTIVELY ALLOW THE LSC GRANTEES TO BEGIN ENGAGING IN ABORTION-RELATED LITIGATION.

THE LSC HAS BEEN PROHIBITED FROM USING TAXPAYER DOLLARS TO LITIGATE ABORTION ISSUES SINCE 1985. BUT THIS BILL WOULD DROP THIS LANGUAGE.

WITHOUT THIS IMPORTANT RESTRICTION, THE FEDERAL GOVERNMENT WILL BE PAYING LAWYERS TO CHALLENGE STATE STATUTES CONCERNING ABORTION. CONSIDERING JUST HOW CONTROVERSIAL THE TOPIC OF ABORTION IS, ALLOWING THE LSC TO PURSUE AN ABORTION-RELATED AGENDA IS NOTHING SHORT OF SOCIAL ENGINEERING. UNFORTUNATELY FOR THE POOR, IT WILL BE SOCIAL ENGINEERING AT THEIR EXPENSE. LET'S KEEP GOVERNMENT LAWYERS OUT OF THE ABORTION BUSINESS.

WE COULD AVOID ALL OF THIS CONTROVERSY IF WE SIMPLY RESTRUCTURED THE LSC TO TRULY HELP LOW-INCOME FOLKS WITH THEIR LEGAL PROBLEMS. WE COULD PATTERN THE CORPORATION AFTER THE JUDICARE SYSTEM IN SOUTHERN MISSOURI, FOR EXAMPLE. THIS IS REALLY ANOTHER DEBATE FOR ANOTHER TIME, BUT IN THE MEANTIME, WE MUST WORK WITH WHAT WE HAVE. IF THE CONGRESS REALLY WANTS TO ENACT THE LEGAL SERVICES BILL, WE SHOULD DO IT DIRECTLY, GOING THROUGH THE ENTIRE VETO AND OVERRIDE PROCESS. THIS CONGRESS IS TRYING TO USE THE APPROPRIATIONS PROCESS TO CIRCUMVENT A LIKELY PRESIDENTIAL VETO. IT WON'T WORK, AND I URGE MY COLLEAGUES TO VOTE AGAINST BACK-DOOR LEGISLATING. VOTE "NO" ON THIS BILL.

MR. OWENS OF UTAH. MR. CHAIRMAN, I RISE IN SUPPORT OF H.R. 5678, LEGISLATION TO APPROPRIATE FUNDING FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, AND RELATED AGENCIES.

HOWEVER, I WISH TO EXPRESS MY HOPE THAT THE SENATE AND CONFEREES WILL SEE FIT TO MATCH THE PRESIDENT'S REQUEST FOR THE MINORITY BUSINESS DEVELOPMENT AGENCY [MBDA]. H.R. 5678 APPROPRIATES $37.9 MILLION FOR MBDA. THE ADMINISTRATION REQUESTED $44 MILLION.

MINORITIES ARE ENTERING THE SMALL BUSINESS FIELD AT A RAPID RATE, AND THE RATE OF RETURN ON EACH DOLLAR OF MBDA INVESTMENT HAS SKYROCKETED IN THE PAST DECADE. THE MBDA OFFICE IN SALT LAKE CITY HAS BEEN INSTRUMENTAL IN THE DEVELOPMENT OF MINORITY-OWNED BUSINESSES IN MY DISTRICT. IN FISCAL YEAR 1990, IT ENGAGED IN NEARLY 2,000 HOURS OF MANAGEMENT AND TECHNICAL ASSISTANCE AND GENERAL COUNSELING, OVER 2 MILLION DOLLARS' WORTH OF FINANCIAL PACKAGES AND OVER $11 MILLION WORTH OF CONTRACTS.

IT WAS INSTRUMENTAL IN THE ESTABLISHMENT OF MY AREA'S HISPANIC CHAMBER OF COMMERCE, AND IS CRITICAL FOR FUTURE BUSINESS DEVELOPMENT IN UTAH'S AFRICAN-AMERICAN, NATIVE AMERICAN, AND RAPIDLY GROWING HISPANIC COMMUNITY. MBDA HAS ALSO DONE MUCH TO HELP THE NONPROFIT GROUPS DEDICATED TO PROVIDING OPPORTUNITIES TO UTAH'S MINORITY ENTREPRENEURS.

AGAIN, I HOPE THAT OUR COUNTERPARTS IN THE SENATE, AND CONFEREES FROM THIS SIDE OF THE AISLE, WILL AT LEAST SPLIT THE DIFFERENCE BETWEEN TODAY'S MBDA APPROPRIATION AND THE LEVEL REQUESTED BY THE ADMINISTRATION.

MR. FAZIO. MR. CHAIRMAN, I RISE IN SUPPORT OF H.R. 5678, THE BILL THAT WILL FUND THE COMMERCE, JUSTICE, AND STATE DEPARTMENTS, THE FEDERAL JUDICIARY, AND RELATED AGENCIES FOR FISCAL YEAR 1993.

DUE TO REDUCED FUNDING, THE SUBCOMMITTEE WAS FORCED TO MAKE VERY DIFFICULT DECISIONS WHEN IT CAME TO ALLOCATING MONEY FOR THE IMPORTANT DOMESTIC PROGRAMS THAT ARE IN THIS BILL. HOWEVER, CHAIRMAN SMITH AND THE MEMBERS AND STAFF OF THE SUBCOMMITTEE HAVE MADE THE NECESSARY HARD CHOICES AND SET GOOD PRIORITIES. THE RESULT IS A WELL-BALANCED BILL. ALTHOUGH THERE IS NO INCREASED FUNDING FOR THE DEPARTMENT OF STATE AND RELATED AGENCIES, AND OVERALL JUSTICE DEPARTMENT FUNDING HAD TO BE RESTRICTED, CERTAIN KEY PROGRAMS -- SUCH AS THOSE TARGETED FOR THE WAR ON CRIME AND DRUGS -- WERE GIVEN PRIORITY STATUS. FOR EXAMPLE, FEDERAL PRISON SALARIES AND EXPENSES AND THE FBI'S ANTICRIME PROGRAMS, AS WELL AS EFFORTS TO COMBAT ORGANIZED CRIME'S INVOLVEMENT IN DRUGS, RECEIVED FUNDING OVER AND BEYOND THE FUNDING GUIDELINES AND RESTRICTIONS UNDER WHICH OTHER PROGRAMS FELL. YET, THE BILL IS STILL $1.3 BILLION BELOW THE PRESIDENT'S BUDGET REQUEST.

AT THIS TIME, I WOULD LIKE TO THANK THE SUBCOMMITTEE FOR ITS PRIORITY CONSIDERATION OF ONE PROGRAM IN PARTICULAR -- NORTHERN CALIFORNIA'S EFFORTS IN PROTECTING AND ACCELERATING THE RECOVERY OF THE THREATENED WINTER RUN CHINOOK SALMON. THE SUBCOMMITTEE HAS SUPPORTED THE WINTER RUN CHINOOK SALMON CAPTIVE BREEDING PROGRAM, WHICH WILL HELP PROTECT THE RUN FROM EXTINCTION AND SPEED ITS EVENTUAL RECOVERY. THE SACRAMENTO WINTER RUN CHINOOK ARE ONE OF TWO RUNS OF SALMON CURRENTLY LISTED AS THREATENED UNDER THE ENDANGERED SPECIES ACT. THE PURPOSE OF THE CAPTIVE BREEDING PROGRAM IS TO PROTECT THE RUN FROM EXTINCTION AND SPEED THE RECOVERY PROCESS; 1,000 FISH WILL BE RAISED TO MATURITY AT TWO LOCATIONS: STEINHART AQUARIUM IN SAN FRANCISCO AND THE UNIVERSITY OF CALIFORNIA'S MARINE LABORATORY AT BODEGA BAY.

THE GOAL IS FOR THESE FISH TO PRODUCE A MINIMUM OF 100,000 PROGENY TO BE RETURNED TO THE WILD, WITH ANOTHER 1,000 JUVENILES TAKEN FROM THE HATCHERY FROM THE PREVIOUS SEASON'S SPAWN FOR THE NEXT CAPTIVE BREEDING BROOD CYCLE. THE PROGRAM HAS A PROPOSED 10 YEAR LIFE, AND IT IS OUR INTENTION THAT APPROXIMATELY $411,000 BE MADE AVAILABLE FOR THIS PURPOSE FROM WITHIN THE $5,487,000 PROVIDED IN THE BILL FOR PACIFIC SALMON RESEARCH.

THE BUREAU OF RECLAMATION HAS ALREADY MADE AVAILABLE $100,000 IN PREVIOUSLY APPROPRIATED DROUGHT RELIEF FUNDS TO LAUNCH THE CAPTIVE BREEDING PROGRAM, AND REDUCED THE AMOUNT THAT WILL BE NEEDED IN FISCAL YEAR 1993 FROM THE NATIONAL MARINE FISHERIES SERVICE BY A LIKE AMOUNT. AND, THE STATE OF CALIFORNIA, **[*H7015]** THROUGH ITS OWN DROUGHT RELIEF PROGRAM AND THE CALIFORNIA SALMON STAMP FUND, IS

MAKING $125,000 AVAILABLE IN THIS FIRST YEAR TO GET THE PROGRAM OFF THE GROUND.

MR. CHAIRMAN, THIS PROGRAM HAS THE BROAD SUPPORT OF COMMERCIAL AND SPORT FISHING ORGANIZATIONS, THE AGRICULTURE COMMUNITY AND ENVIRONMENTAL ORGANIZATIONS. IT'S A GOOD PROGRAM, AND I APPRECIATE THE CHAIRMAN'S AND COMMITTEE'S SUPPORT FOR THIS EFFORT.

AN EXAMPLE OF THE EMPHASIS THAT H.R. 5678 PLACES ON OUR ONGOING WAR AGAINST CRIME IS ITS SUPPORT FOR THE EFFORTS OF SEARCH, THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS. THIS IS THE ORGANIZATION THAT, AT NO COST, ASSISTS STATE AND LOCAL CRIMINAL JUSTICE AGENCIES IN THEIR USE OF AUTOMATED INFORMATION SYSTEMS TO COMBAT CRIME. SEARCH NOT ONLY HELPS INDIVIDUAL POLICE DEPARTMENTS IMPROVE THEIR USE OF THEIR SYSTEMS, IT ALSO ENABLES DIFFERENT DEPARTMENTS ACROSS THE COUNTRY TO SHARE THEIR SUCCESSFUL APPLICATIONS WITH EACH OTHER.

IN CALIFORNIA, SEARCH ASSISTANCE TAKES ON A VARIETY OF FORMS -- SITE VISITS, OVER-THE-PHONE CONSULTATIONS, AND PRESENTATIONS AT SEARCH'S HEADQUARTERS IN SACRAMENTO. WITHIN THE LAST YEAR AND A HALF, SEARCH HAS GIVEN THE WOODLAND POLICE DEPARTMENT TECHNICAL ASSISTANCE WITH THEIR CRIME ANALYST'S COMPUTER PROGRAM. IT HAS ALSO HELPED THE SACRAMENTO COUNTY SHERIFF'S DEPARTMENT DESIGN A DATABASE TO TRACK INFORMATION IN A SERIAL HOMICIDE INVESTIGATION, AND PROVIDED INFORMATION TO THE DAVIS POLICE DEPARTMENT REGARDING ELECTRONIC MAIL PRIVACY ISSUES.

H.R. 5678 ALSO MAINTAINS ONGOING SUPPORT FOR THE JUVENILE JUSTICE PROGRAMS, WHOSE EFFORTS ARE TARGETED AT REDUCING DRUG ABUSE, DELINQUENCY, CHILD ABUSE AND GANGS AMONG AMERICAN YOUTH. ALONG THE SAME LINES, H.R. 5678 SUSTAINS BOTH THE MISSING CHILDREN PROGRAM AND THE MISSING ALZHEIMER PATIENT ALERT PROGRAM, AND ENCOURAGES SUPPORT FOR THE PROPOSAL TO USE RETIRED LAW ENFORCEMENT PROFESSIONALS AS VOLUNTEERS TO ASSIST IN PROTECTING CHILDREN.

THE NATIONAL WEATHER SERVICE'S FRUIT FROST WARNINGS AND FIRE AND AGRICULTURAL WEATHER FORECASTING PROGRAMS ARE ALSO INCLUDED IN H.R. 5678. ALL OF THESE ARE VERY IMPORTANT TO CALIFORNIA, PARTICULARLY IN THIS YEAR OF SEVERE DROUGHT AND FIRE HAZARD. THESE PROGRAMS ARE ALSO IMPORTANT TO FARMERS BECAUSE THEY MONITOR WEATHER PATTERNS THAT ARE POTENTIALLY DEVASTATING TO CALIFORNIA CROPS.

FUNDING FOR THE SMALL BUSINESS ADMINISTRATION [SBA] -- INCLUDING THE SBA LOAN GUARANTEE PROGRAM -- IS ALSO IN H.R. 5678. AMERICAN SMALL BUSINESSES CONTINUE TO SUFFER UNDER A SERIOUS CREDIT CRUNCH; OUR SMALL BUSINESS OWNERS HAVE GREAT DIFFICULTY OBTAINING LONG-TERM LOANS AT REASONABLE RATES. BUT THE SBA LOAN GUARANTEE PROGRAM BOTH

SUBSIDIZES LOANS AND PROVIDES DIRECT LENDING SERVICES TO THIS CRITICAL SEGMENT OF OUR NATION'S ECONOMY.

ADDITIONALLY, H.R. 5678 FUNDS THE ADVANCED TECHNOLOGY PROGRAM THAT SUPPORTS INDUSTRY-LED RESEARCH EFFORTS TO DEVELOP NEW TECHNOLOGIES THAT INCREASE AMERICAN COMPETITIVENESS IN THIS GLOBAL ECONOMY, AND OUR MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS, LIKE THE UNITED NATIONS, THE NORTH ATLANTIC TREATY ORGANIZATIONS AND THE ORGANIZATION OF AMERICAN STATES.

THE PROGRAMS IN H.R. 5678 ARE PROGRAMS THAT HELP ENSURE OUR QUALITY OF LIFE AS AMERICANS. THEY SAFEGUARD OUR CHILDREN, NEIGHBORHOODS AND COMMUNITIES, AND PRESERVE OUR RESOURCES. THEY PROTECT OUR INDUSTRIES, BOTH LOCALLY AND GLOBALLY, AND HELP US MAINTAIN OUR POSITION AS AN INTERNATIONAL LEADER -- ECONOMICALLY, SOCIALLY AND POLITICALLY. I URGE MY COLLEAGUES TO SUPPORT THESE PROGRAMS BY VOTING FOR FINAL PASSAGE OF THIS BILL.

MR. DICKS. MR. CHAIRMAN, I RISE TO BRING TO THE ATTENTION OF THE HOUSE THE IMPORTANT FUNDING IN H.R. 5678, THE STATE, JUSTICE, AND COMMERCE APPROPRIATIONS BILL FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY.

AS WE FACE THE POSTCOLD WAR WORLD, THE DANGER OF NUCLEAR PROLIFERATION REPRESENTS THE MOST PRESSING POTENTIAL DANGER TO WORLD PEACE AND STABILITY. WHILE WE DEBATE FUNDING AND APPROACH TO DEAL WITH POTENTIAL PROLIFERATION IN THE SDI PROGRAM, IT IS CRITICAL THAT WE GIVE EQUAL PRIORITY TO INTERNATIONAL EFFORTS TO STOP THIS LEAGUE BEFORE IT CAN TAKE HOLD. THE IAEA IS THE KEY TO SUCCESS IN THESE EFFORTS.

THE FUNDS PROVIDED IN THE BILL ARE MODEST IN COMPARISON TO WEAPONS PROGRAMS, JUST $46.9 MILLION, BUT THEY HAVE THE POTENTIAL TO BE FAR MORE EFFECTIVE. THE WORKLOAD AT IAEA HAS NEVER BEEN GREATER. THEY ARE NOT ONLY ACTIVELY INVOLVED IN ASSURING THAT IRAQ LIVES UP TO THE TERMS OF THE PEACE AGREEMENT THAT REQUIRES ELIMINATION OF THEIR INVENTORY OF WEAPONS OF MASS DESTRUCTION AND THEIR ABILITY TO EVER PRODUCE SUCH WEAPONS AGAIN. THEY ARE ALSO TAKING THE LEAD IN STEPS TO ASSURE THAT NORTH KOREA DOES NOT JOIN THE NUCLEAR CLUB, TO CURB PROLIFERATION IN THE EMERGING REPUBLICS OF THE FORMER SOVIET UNION AND EASTERN EUROPE, AND TO HALT THE TRADE IN NUCLEAR MATERIALS.

THE AGENCY IS ALSO TAKING A LEAD ROLE IN FACING UP TO WHAT IS AN EQUALLY SERIOUS PROBLEM, ASSURING THE SAFETY OF NUCLEAR REACTORS IN THE FORMER SOVIET UNION AND EASTERN EUROPE. IAEA IS IN THE PROCESS OF COMPLETING A COMPREHENSIVE ASSESSMENT OF THIS DANGER, WHICH INFORMED OBSERVERS HAVE CHARACTERIZED AS HAVING THE POTENTIAL TO PRODUCE 40 CHERNOBYLS. I HAVE BEEN WORKED TO DEAL WITH THE ISSUE INCLUDING AN AMENDMENT I OFFERED TO THE DEFENSE APPROPRIATIONS BILL THAT WILL ALLOW USE OF $50 MILLION IN DEFENSE DEPARTMENT FUNDS TO ADDRESS THE PROBLEM.

IN THE PAST, WE HAVE EXPERIENCED PROBLEMS WITH THE ADMINISTRATION WITH RESPECT TO TIMELY RELEASE OF U.S. CONTRIBUTIONS TO THIS AGENCY. I AM PLEASED THAT IN A RECENT LETTER TO THE CONGRESS, NATIONAL SECURITY ADVISER BRENT SCOWCROFT HAS PLEDGED THAT THE ADMINISTRATION IS EXPEDITING THE PAYMENT OF OUR FULL ASSESSMENT TO THE IAEA AND THAT ALL OUTSTANDING ARREARAGES HAVE BEEN CLEARED. I AM ALSO PLEASED TO NOTE THAT $2.1 MILLION IS BEING PROVIDED TO THE AGENCY IN 1992 ABOVE OUR NORMAL ASSESSED AND VOLUNTARY CONTRIBUTIONS INCLUDING $1 MILLION IN-KIND ASSISTANCE FROM THE DEPARTMENT OF ENERGY AND BILATERAL ASSISTANCE FROM ACDA.

THE PROLIFERATION STAKES FACING THE WORLD IN THE CURRENT ENVIRONMENT DEMANDS PRIORITY ATTENTION AND ACTION. I AM PLEASED THAT AT LONG LAST IT APPEARS THAT THE ADMINISTRATION IS FACING UP TO THESE STAKES AND I INTEND TO CONTINUE TO MONITOR DEVELOPMENTS TO ASSURE THAT THIS PLEDGE IS FULFILLED.

MR. HUGHES. MR. CHAIRMAN, I RISE IN SUPPORT OF H.R. 5678, APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES. PROGRAMS WITHIN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION [NOAA] WITHIN THE DEPARTMENT OF COMMERCE ARE OF IMMENSE IMPORTANCE TO NEW JERSEY'S COASTAL ECONOMY AND THE HEALTH OF NEW JERSEY'S MARINE ECOSYSTEM; THEREFORE, I WILL CONCENTRATE MY REMARKS ON NOAA APPROPRIATIONS.

THIS BILL APPROPRIATES A TOTAL OF $1.541 BILLION FOR NOAA IN FISCAL YEAR 1993. IMPORTANT PROGRAMS FUNDED THROUGH NOAA INCLUDE THE NATIONAL OCEAN SERVICE, NATIONAL MARINE FISHERIES SERVICE, THE OCEANIC AND ATMOSPHERIC RESEARCH PROGRAMS, THE NATIONAL ENVIRONMENTAL AND SATELLITE, DATA AND INFORMATION SERVICE, AND THE NATIONAL WEATHER SERVICE.

I AM PARTICULARLY PLEASED TO SEE AN APPROPRIATION OF $500,000 TO CONTINUE THE SITE SELECTION, ENGINEERING DESIGN AND BEGIN CONSTRUCTION OF A MULTISPECIES AQUACULTURE FACILITY IN NEW JERSEY.

THE MAJOR FACTOR LIMITING AQUACULTURE DEVELOPMENT IN NEW JERSEY -- AND IN MOST OTHER STATES -- IS THE LACK OF DEMONSTRATION FACILITIES THAT SERVE THE FUNCTION OF EXPERIMENTAL FARMS. THIS FACILITY WILL OPERATE AS A COOPERATIVE BETWEEN RUTGERS UNIVERSITY AND CUMBERLAND COUNTY COLLEGE IN COLLABORATION WITH SEVERAL OTHER COLLEGES. IT WILL BE MULTIPURPOSE AND FLEXIBLE TO ALLOW RESEARCH AND DEMONSTRATION OF BOTH FINFISH AND SHELLFISH AND WILL SUPPORT DEVELOPMENT OF SMALL-SCALE CULTURE OPERATIONS AND LARGER COMMERCIAL VENTURES.

AFTER THE INITIAL PHASE, THE DEMONSTRATION COMPONENT WILL OPERATE VERY SIMILAR TO AN EXPERIMENTAL FARM OF THE AGRICULTURE EXTENSION SERVICE. THE HATCHERY WILL BE CAPABLE OF CONDUCTING INDUSTRY-SPONSORED RESEARCH AND DEVELOPMENT PROJECTS. THIS SYSTEM WILL

INTRODUCE NEW IDEAS, TECHNOLOGY, AND EQUIPMENT WHICH WILL BENEFIT THE AQUACULTURE INDUSTRY IN NEW JERSEY, THE MID-ATLANTIC, AND NATIONWIDE.

THIS FACILITY WILL ASSIST IN REVERSING THE TREND OF ECONOMIC DEPRESSION IN SOUTH JERSEY CAUSED BY THE DECIMATION BY DISEASE OF THE ONCE VERY VIABLE OYSTER INDUSTRY, OVERFISHING AND POLLUTION. INDEED, I AM VERY EXCITED ABOUT THE MULTISPECIES AQUACULTURE FACILITY -- IT WILL BENEFIT NEW JERSEY AND ADVANCE AQUACULTURE THROUGHOUT OUR NATION.

I AM ALSO PLEASED THAT THE COMMITTEE HAS RETAINED FUNDING FOR THE NATIONAL UNDERSEA RESEARCH PROGRAM. NUPR IS A HIGHLY COMPETITIVE AND PROGRESSIVE PROGRAM WHICH ASSISTS LEADING SCIENTISTS WITH RESEARCH IN THE GREAT LAKES, THE OCEANS, AND ON THE SEA FLOOR USING THE MOST MODERN TECHNOLOGY AND UNDERSEA HABITATS.

THERE ARE SIX NUPR CENTERS LOCATED THROUGHOUT THE COUNTRY, INCLUDING THE RECENTLY ESTABLISHED NEW YORK BIGHT CENTER IN NEW JERSEY. THE FOCUS OF NUPR RESEARCH IS THE IDENTIFICATION, DISTRIBUTION AND IMPACT OF CONTAMINANTS IN THE MARINE ENVIRONMENT, SEDIMENT DYNAMICS, AND RECRUITMENT OF ECONOMICALLY IMPORTANT FISH AND INVERTEBRATES.

THE FISCAL YEAR 1993 APPROPRIATION OF $15.9 MILLION WILL ENSURE THAT THE PROGRAM CONTINUES TO PROVIDE OPPORTUNITIES FOR THE SCIENTIFIC COMMUNITY TO CONDUCT RESEARCH NOT POSSIBLE WITHIN THE LIMIT OF TRADITIONAL SHIP-BASED RESEARCH AND LABORATIORIES.

FINALLY, I AM PLEASED TO SEE FUNDS APPROPRIATED TO CONTINUE THE IMPORTANT WORK OF SEVERAL OTHER PROGRAMS THAT ARE CRUCIAL TO MAINTAINING AND IMPROVING OUR MARINE ENVIRONMENT. THESE PROGRAMS INCLUDE THE NATIONAL SEA GRANT COLLEGE PROGRAM, NATIONAL MARINE SANCTUARY PROGRAM, NATIONAL COASTAL RESEARCH AND DEVELOPMENT INSTITUTE, AND THE COASTAL ZONE MANAGEMENT PROGRAM.

DESPITE THESE AUSTERE TIMES AND THE NECESSARY BUDGET CUTS, THIS BILL REFLECTS NOAA'S STRONG COMMITMENT TO MARINE SCIENCE AND TO **[*H7016]** THE PRESERVATION AND PROTECTION OF THE COASTAL, OCEAN AND GREAT LAKES ENVIRONMENTS AND THEIR ASSOCIATED LIVING MARINE RESOURCES. THIS IS A RATIONAL BILL AND I URGE MY COLLEAGUES' SUPPORT FOR ITS PASSAGE.

MR. DOOLEY. MR. CHAIRMAN, I RISE IN SUPPORT OF H.R. 5678 AND I WOULD LIKE TO COMMEND THE GENTLEMAN FROM IOWA [MR. SMITH] FOR HIS LEADERSHIP IN BRINGING THIS LEGISLATION TO THE FLOOR.

I REALIZE THAT THE COMMITTEE WAS FACED WITH EXTREMELY DIFFICULT DECISIONS IN DETERMINING THE FUNDING LEVELS FOR THE VARIOUS DOMESTIC PROGRAMS IN THIS BILL AND I COMMEND THE COMMITTEE FOR WORKING WITHIN THE PARAMETERS SET BY THE 1990 BUDGET SUMMIT AGREEMENT.

I WOULD LIKE TO FOCUS MY REMARKS ON A HIGHLY EFFECTIVE PROGRAM, THE MINORITY BUSINESS DEVELOPMENT AGENCY, WHOSE FUNDING WOULD BE REDUCED UNDER THIS BILL BY $2.6 MILLION AS COMPARED TO FISCAL YEAR 1992.

I APPLAUD THIS AGENCY'S WORK IN MY DISTRICT AND THROUGHOUT THE NATION. IT HAS HELPED TO FINANCE MILLIONS OF DOLLARS FOR MINORITY BUSINESSES, CREATED THOUSANDS OF JOBS, AND PRODUCED MILLIONS OF DOLLARS IN CONTRACT OPPORTUNITIES.

I WANT TO STRESS THE IMPORTANCE OF THIS PROGRAM IN MEETING THE NEEDS OF MINORITY-OWNED BUSINESSES ACROSS THE COUNTRY AND I RESPECTFULLY REQUEST THAT WHEN MEMBERS OF THE CONFERENCE COMMITTEE MEET, FUNDING BE RESTORED TO AT LEAST THE 1992 LEVEL.

MR. OWENS OF UTAH. MR. CHAIRMAN, AS THE HOUSE AUTHOR OF THE RADIATION EXPOSURE COMPENSATION ACT, FOR WHICH THE RADIATION EXPOSURE TRUST FUND WAS ESTABLISHED, I WANT TO EXPRESS MY GRATITUDE TO THE APPROPRIATIONS SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, AND JUDICIARY SUBCOMMITTEE AND THE FULL APPROPRIATIONS COMMITTEE FOR PROVIDING FULL FUNDING FOR THE PROGRAM THIS YEAR. IN PARTICULAR, I WANT TO THANK CHAIRMAN SMITH OF THE SUBCOMMITTEE AND CHAIRMAN MURTHA OF THE DEFENSE APPROPRIATIONS SUBCOMMITTEE, WHOSE COOPERATION WAS ESSENTIAL AND DEEPLY APPRECIATED.

THE $173 MILLION REQUESTED BY THE ADMINISTRATION, AND PROVIDED BY THE COMMITTEE, IS POWERFUL EVIDENCE OF THE FEDERAL GOVERNMENT'S DETERMINATION TO RIGHT, AS MUCH AS IS POSSIBLE, THE TERRIBLE WRONGS DONE TO PEOPLE IN THE SOUTHWEST WHO WERE INVOLUNTARY SACRIFICES IN THE COLD WAR IN OUR NUCLEAR WEAPONS PROGRAMS, BOTH FROM ABOVE-GROUND TESTING, AND UNSAFE UNDERGROUND URANIUM MINING.

MONEY WILL NEVER MAKE THINGS RIGHT, BUT IT -- AND, MORE IMPORTANTLY, THE APOLOGY OFFERED BY THE FEDERAL GOVERNMENT -- WILL ALLEVIATE SUFFERING AND RESTORE CONFIDENCE IN OUR GOVERNMENT'S CARE FOR ITS CITIZENS.

I THANK THE COMMITTEE SINCERELY FOR ITS GENEROSITY AND ITS SUPPORT. WE STILL HAVE A FEW PROBLEMS WE ARE TRYING TO IRON OUT IN THE ADMINISTRATION OF THIS PROGRAM, BUT I AM CONFIDENT THAT WE CAN WORK THEM OUT AND THAT THIS MONEY WILL BE DISTRIBUTED FAIRLY AND EFFICIENTLY TO THOSE DESERVING FAMILIES.

MR. SWIFT. MR. CHAIRMAN, ON JULY 28 THE HOUSE PASSED H.R. 5677, THE LABOR, HEALTH, AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS BILL FOR FISCAL YEAR 1993. THIS COMPREHENSIVE PIECE OF LEGISLATION PROVIDES FUNDING FOR A MULTITUDE OF IMPORTANT FEDERAL PROGRAMS. IN PARTICULAR, I WANTED TO COMMENT ON THE FUNDING FOR THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM [LIHEAP].

WE ALL KNOW HOW EXPENSIVE IT IS TO HEAT A HOME IN THE WINTER. THERE ARE COUNTLESS AMERICANS ACROSS THIS COUNTRY -- RANGING FROM THE ELDERLY TO THE YOUNG TO THE DISABLED -- WHO FACE TREMENDOUS HARDSHIP DURING SEVERE WEATHER EVEN THOUGH THEY MAY HAVE WHAT IS CONSIDERED TO BE ADEQUATE SHELTER. FOR MANY, THE QUESTION BECOMES WHETHER TO PAY THE HEATING BILL OR THE GROCERY BILL AND THAT IS A CHOICE THAT NO ONE SHOULD HAVE TO MAKE. LIHEAP HAS BEEN ENORMOUSLY SUCCESSFUL IN HELPING THOUSANDS OF FAMILIES AND INDIVIDUALS AVOID HAVING TO MAKE THAT MOST DIFFICULT CHOICE.

FOR NEARLY A DOZEN YEARS, LIHEAP HAS PROVIDED CRITICAL FUNDING TO STATES FOR ENERGY ASSISTANCE PAYMENTS, ENERGY CRISIS INTERVENTION AND ENERGY CONSERVATION. IT HAS ALLOWED THOUSANDS ALL ACROSS THIS COUNTRY TO REMAIN WARM DURING THE COLD WINTERS AND COOL DURING THE HOT SUMMERS. LAST YEAR IN WASHINGTON STATE ALONE, LIHEAP ASSISTED NEARLY 100,000 HOUSEHOLDS WITH ENERGY OR CRISIS ASSISTANCE AND YET THERE ARE OVER 275,000 HOUSEHOLDS ELIGIBLE FOR THE ASSISTANCE. IN ADDITION, APPROXIMATELY 2,700 HOMES IN WASHINGTON STATE RECEIVED WEATHERIZATION ASSISTANCE; HOWEVER, THE WASHINGTON STATE DEPARTMENT OF COMMUNITY DEVELOPMENT ESTIMATES THAT 165,000 HOMES NEED SUCH ASSISTANCE. AND THE FOLKS THAT LIHEAP ASSISTS ARE THE MOST NEEDY IN OUR COUNTRY -- THREE-QUARTERS OF WASHINGTON STATE LIHEAP RECIPIENTS HAD ANNUAL INCOMES OF LESS THAN $8,000.

SNOHOMISH COUNTY, FOR EXAMPLE, IN MY OWN SECOND CONGRESSIONAL DISTRICT HAS BEEN ABLE TO ASSIST NEARLY 5,000 HOMES WITH ENERGY ASSISTANCE -- A LARGE PORTION, 43 PERCENT OF THOSE WERE HOUSEHOLDS WHICH HAD CHILDREN UNDER THE AGE OF 6. UNFORTUNATELY, IT IS ESTIMATED THAT LIHEAP IS ONLY REACHING A THIRD OF THOSE ELIGIBLE IN SNOHOMISH COUNTY.

THE APPROPRIATIONS BILL PASSED BY THE HOUSE CONTAINS $891 MILLION IN NONEMERGENCY FUNDING FOR LIHEAP WHICH IS A DRAMATIC REDUCTION -- $609 MILLION -- OVER LAST YEAR. OUR BUDGET SITUATION HAS FORCED THE APPROPRIATIONS COMMITTEE TO MAKE SOME DIFFICULT DECISIONS AND I RECOGNIZE THAT THERE WERE SEVERAL OTHER WORTHWHILE PROGRAMS WHICH ALSO RECEIVED LESS FUNDING THAN LAST YEAR. HOWEVER, AT A TIME WHEN WE HAVE MORE FOLKS OUT OF WORK BECAUSE OF THE DEVASTATING EFFECTS OF THE RECESSION AND AT A TIME WHEN ENERGY PRICES CONTINUE TO GO UP, I STRONGLY BELIEVE THAT WE NEED TO CONTINUE TO SUPPORT THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM TO THE GREATEST EXTENT POSSIBLE. I AM HOPEFUL THAT SUFFICIENT FUNDING FOR LIHEAP WILL BE RESTORED IN CONFERENCE SO THAT WE CAN TAKE CARE OF ONE OF THE MOST BASIC OF HUMAN NEEDS -- HAVING A HOME THAT IS DRY IN THE RAIN, COOL IN THE SUMMER, AND WARM IN THE WINTER.

The CHAIRMAN. Without objection, all time for general debate has expired. There was no objection. Pursuant to the rule, the amendment printed in part 1 of House Report 102-748, and any

amendments thereto, shall be debatable for 30 minutes, equally divided and controlled by the proponent and an opponent of the amendment.

Debate under the 5-minute rule on each other amendment to the bill, including amendments thereto, shall be limited to 20 minutes.

The Clerk will read.

The Clerk read as follows:

H.R. 5678

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes, namely:

TITLE I -- DEPARTMENT OF JUSTICE AND RELATED AGENCIES

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Missing Children's Assistance Act, as amended, including salaries and expenses in connection therewith, $86,269,000, to remain available until expended, of which $475,000 of the funds provided under the Missing Children's Program shall be made available as a grant to a national voluntary organization representing Alzheimer patients and families to plan, design, and operate a Missing Alzheimer Patient Alert program.

In addition, for grants, contracts, cooperative agreements, and other assistance authorized by parts D and E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, for State and Local Narcotics Control and Justice Assistance Improvements, including salaries and expenses in connection therewith, $463,571,000, to remain available until expended, of which: (a) $441,671,000 shall be available to carry out subpart 1 and chapter A of subpart 2 of part E of title I of said Act, for the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs; (b) $900,000 shall be available to carry out part N of title I of said Act, for Grants for Televised Testimony of Child Abuse Victims, as authorized by section 241(c) of Public Law 101-647 (104 Stat. 4814); and (c) $21,000,000 shall be available to the Director of the Federal Bureau of Investigation for the National Crime Information Center 2000 project, as authorized by section 613 of Public Law 101-647 (104 Stat. 4824): PROVIDED, That $12,000,000 of the funds made available under chapter A of subpart 2 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, shall be available to carry out the provisions of chapter B of subpart 2 of part E of title I of said Act for Correctional Options Grants: PROVIDED FURTHER, That funds made available in fiscal year 1993 under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, may be obligated for programs to assist States in the litigation processing of death penalty Federal habeas corpus petitions.

In addition, for grants, contracts, cooperative agreements, and other assistance authorized by title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, including

salaries and expenses in connection therewith, $70,875,000, to remain available until expended, as authorized by section 261(a) of part D of title II, of said Act (42 U.S.C. 5671(a)), of which $3,200,000 is for expenses authorized by section 281 of part D of title II of said Act.

In addition, and notwithstanding section 214(b) of title II of Public Law 101-647 (104 Stat. 4794), $1,450,000, to remain available until expended, for a grant to the American Prosecutor Research Institute's National Center for Prosecution of Child Abuse for technical assistance and training instrumental to the criminal prosecution of child abuse cases, as authorized in section 213 of Public Law 101-647 (104 Stat. 4793).

**[*H7017]** In addition, and notwithstanding section 224(b) of title II of Public Law 101-647 (104 Stat. 4798), $450,000, to remain available until expended, for a grant to the National Council of Juvenile and Family Court Judges to develop model technical assistance and training programs to improve the handling of child abuse and neglect cases, as authorized in section 223(a) of Public Law 101-647 (104 Stat. 4797).

In addition, $4,300,000, as authorized in section 501 of Public Law 99-603, for the purpose of making grants to States for their expenses by reason of Mariel Cubans having to be incarcerated in State facilities for terms requiring incarceration for the full period October 1, 1992, through September 30, 1993, following their conviction of a felony committed after having been paroled into the United States by the Attorney General: PROVIDED, That within thirty days of enactment of this Act the Attorney General shall announce in the Federal Register that this appropriation will be made available to the States whose Governors certify by February 1, 1993, a listing of names of such Mariel Cubans incarcerated in their respective facilities: PROVIDED FURTHER, That the Attorney General, not later than April 1, 1993, will complete his review of the certified listings of such incarcerated Mariel Cubans, and make grants to the States on the basis that the certified number of such incarcerated persons in a State bears to the total certified number of such incarcerated persons: PROVIDED FURTHER, That the amount of reimbursements per prisoner per annum shall not exceed $12,000.

PUBLIC SAFETY OFFICERS BENEFITS

For payments authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), as amended, such sums as are necessary, to remain available until expended, as authorized by section 6093 of Public Law 100-690 (102 Stat. 4339-4340).

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, $113,626,000; of which not to exceed $1,650,000 is for the Facilities Program 2000, to remain available until expended.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $29,222,000; including not to exceed $10,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; and for the acquisition, lease, maintenance and operation of motor vehicles without regard to the general purchase price limitation.

QUANTICO TRAINING CENTER

For necessary expenses for planning, construction, and purchase of equipment for an expanded law enforcement training center at the FBI Training Academy at Quantico, Virginia, $7,700,000 to remain available until expended, to be expended at the direction of the Attorney General.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized by law, $9,053,000.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed $20,000 for expenses of collecting evidence, to be expended under the direction of the Attorney General and accounted for solely on his certificate; and rent of private or Government-owned space in the District of Columbia; $384,501,000; and of which not to exceed $6,000,000 for litigation support contracts shall remain available until September 30, 1994: PROVIDED, That of the funds available in this appropriation, not to exceed $35,213,000 shall remain available until expended for office automation systems for the legal divisions covered by this appropriation, and for the United States Attorneys, the Antitrust Division, and offices funded through "Salaries and Expenses", General Administration: PROVIDED FURTHER, That of the total amount appropriated, not to exceed $1,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses: PROVIDED FURTHER, That notwithstanding 31 U.S.C. 1342, the Attorney General may accept on behalf of the United States, gifts of money, personal property and services, for the purpose of hosting the International Criminal Police Organization's (INTERPOL) American Regional Conference in the United States during fiscal year 1993.

In addition, for expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed $1,860,000 to be appropriated from the Vaccine Injury Compensation Trust Fund.

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, $58,494,000: PROVIDED, That notwithstanding any other provision of law, not to exceed $13,500,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a)) shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: PROVIDED FURTHER, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 1993, so as to result in a final fiscal year appropriation estimated at not more than $44,994,000: PROVIDED FURTHER, That any fees received in excess of $13,500,000 in fiscal year 1993 shall remain available until expended, but shall not be available for obligation until fiscal year 1994.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Office of the United States Attorneys; $730,040,000, of which not to exceed $2,500,000 shall be available until September 30, 1994 for the purposes of (1) providing training of personnel of the Department of Justice in debt collection, (2) providing services to the Department of Justice related to locating debtors and their property, such as title searches, debtor skiptracing, asset searches, credit reports and other investigations, (3) paying the costs of the Department of Justice for the sale of property not covered by the sale proceeds, such as auctioneers' fees and expenses, maintenance and protection of property and businesses, advertising and title search and surveying costs, and (4) paying the costs of processing and tracking debts owed to the United States Government: PROVIDED, That of the total amount appropriated, not to exceed $8,000 shall be available for official reception and representation expenses: PROVIDED FURTHER, That not to exceed $10,000,000 of those funds available for automated litigation support contracts shall remain available until September 30, 1994: PROVIDED FURTHER, That of amounts available in this account in fiscal year 1993 for intergovernmental agreements to fund pilot projects pertaining to the investigation and prosecution of violent crime and drug offenses, not to exceed $20,000,000 shall remain available until expended.

UNITED STATES TRUSTEE SYSTEM FUND

For the necessary expenses of the United States Trustee Program, $57,221,000, to remain available until expended and to be derived from the Fund, for activities authorized by section 115 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554): PROVIDED, That deposits to the Fund are available in such amounts as may be necessary to pay refunds due depositors.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, $898,000.

SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

For necessary expenses of the United States Marshals Service; including the acquisition, lease, maintenance, and operation of vehicles and aircraft, and the purchase of passenger motor vehicles for police-type use without regard to the general purchase price limitation for the current fiscal year; $313,768,000, of which not to exceed $6,000 shall be available for official reception and representation expenses.

SUPPORT OF UNITED STATES PRISONERS

For support of United States prisoners in the custody of the United States Marshals Service as authorized in 18 U.S.C. 4013, but not including expenses otherwise provided for in appropriations available to the Attorney General; $230,075,000, to remain available until expended; of which not to exceed $14,000,000 shall be available under the Cooperative Agreement Program: PROVIDED, That, unless a notification as required under section 606 of this Act is submitted to the Committees on Appropriations of the House and Senate, none of the funds in this Act for the Cooperative Agreement Program shall be available for a cooperative agreement with a State or local government for the housing of Federal prisoners and detainees when the cost per bed space for such cooperative agreement exceeds $50,000, and in addition, any cooperative agreement with a cost per bed space that exceeds $25,000 must remain in effect for no less than 15 years.

FEES AND EXPENSES OF WITNESSES

For expenses, mileage, compensation, and per diems of witnesses, for private counsel expenses, and for per diems in lieu of subsistence, as authorized by law, including advances, $81,010,000, to remain available until expended; of which not to exceed $4,750,000 may be made available for planning, construction, renovation, maintenance, remodeling, and repair of buildings and the purchase of equipment incident thereto for protected witness safesites; and of which not to exceed $1,000,000 may be made available for the purchase and maintenance of armored vehicles for transportation of protected witnesses.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, established by title X of the Civil Rights Act of 1964, $26,106,000, of which not to exceed $18,198,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements and other expenses necessary under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96-422; 94 Stat. 1809) for the processing, care, maintenance, security, transportation and **[*H7018]** reception and placement in the United States of Cuban and Haitian entrants: PROVIDED, That notwithstanding section 501(e)(2)(B) of the Refugee Education Assistance Act of 1980 (Public Law 96-422; 94 Stat. 1810), funds may be expended for assistance with respect to Cuban and Haitian entrants as authorized under section 501(c) of such Act: PROVIDED FURTHER, That to expedite the outplacement of eligible Mariel Cubans or other aliens from Bureau of Prisons or Immigration and Naturalization Service operated or contracted facilities into Community Relations Service contracted hospital and halfway house facilities, the Attorney General may direct reimbursements to the Cuban Haitian Entrant Program from "Federal Prison System, Salaries and Expenses" or "Immigration and Naturalization Service, Salaries and Expenses": PROVIDED FURTHER, That if such reimbursements described above exceed $500,000, they shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(A)(ii), (B), (C), (F), and (G), as amended, $93,000,000 to be derived from the Department of Justice Assets Forfeiture Fund.

RADIATION EXPOSURE COMPENSATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses in accordance with the Radiation Exposure Compensation Act, $2,722,000.

PAYMENT TO THE RADIATION EXPOSURE COMPENSATION TRUST FUND

For payments to the Radiation Exposure Compensation Trust Fund, $170,750,000 as authorized by section 3(e) of the Radiation Exposure Compensation Act (Public Law 101-426), as amended.

INTERAGENCY LAW ENFORCEMENT

ORGANIZED CRIME DRUG ENFORCEMENT

For necessary expenses for the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking not otherwise provided for, to include intergovernmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, $378,954,000, of which

$50,000,000 shall remain available until expended: PROVIDED, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation: PROVIDED FURTHER, That any unobligated balances remaining available at the end of the fiscal year shall revert to the Attorney General for reallocation among participating organizations in the succeeding fiscal year, subject to the reprogramming procedures described in section 606 of this Act.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For expenses necessary for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 2,670 passenger motor vehicles of which 2,075 will be for replacement only, without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; and not to exceed $70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; $1,910,777,000, of which not to exceed $25,000,000 for automated data processing and telecommunications and $1,000,000 for undercover operations shall remain available until September 30, 1994; of which $130,000,000 is for necessary expenses of the Federal Bureau of Investigation for special programs in support of the Nation's security; of which not to exceed $8,000,000 for research and development related to investigative activities shall remain available until expended; of which not to exceed $5,000,000 is authorized to be made available for making payments or advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to violent crime, terrorism and drug investigations; of which $48,000,000, to remain available until expended, shall only be available to defray expenses for the automation of fingerprint identification services and related costs; and of which $1,500,000 shall be available to maintain an independent program office dedicated solely to the relocation of the Identification Division and the automation of fingerprint identification services: PROVIDED, That not to exceed $45,000 shall be available for official reception and representation expenses.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed $70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs; purchase of not to exceed 1,054 passenger motor vehicles of which 730 are for replacement only for police-type use without regard to the general purchase price limitation for the current fiscal year; and acquisition, lease, maintenance, and operation of aircraft; $702,933,000 of which not to exceed $1,800,000 for research shall remain available until expended; and of which not to exceed $4,000,000 for purchase of evidence and payments for information, not to exceed $4,000,000 for contracting for ADP and telecommunications equipment, not to exceed $2,000,000 for technical and laboratory equipment, and not to exceed $10,300,000 for purchase of aircraft and

equipment, shall remain available until September 30, 1994: PROVIDED, That not to exceed $45,000 shall be available for official reception and representation expenses.

IMMIGRATION AND NATURALIZATION SERVICE

SALARIES AND EXPENSES

For expenses, not otherwise provided for, necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, including not to exceed $50,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on his certificate; purchase for police-type use (not to exceed 788 of which 652 are for replacement only) without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; and research related to immigration enforcement; $940,019,000, of which not to exceed $400,000 for research and $11,800,000 for construction shall remain available until expended: PROVIDED, That none of the funds available to the Immigration and Naturalization Service shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000: PROVIDED FURTHER, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: PROVIDED FURTHER, That not to exceed $5,000 shall be available for official reception and representation expenses: PROVIDED FURTHER, That none of the funds provided in this Act shall be available to pay overtime pay at a rate which exceeds that established by 5 U.S.C. 5542(a) to persons performing duties in connection with the examination and landing of passengers and crews of steamships, trains, airplanes, or other vehicles arriving in the United States from a foreign port.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For expenses necessary for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 531 of which 344 are for replacement only) and hire of law enforcement and passenger motor vehicles; and for the provision of technical assistance and advice on corrections related issues to foreign governments; $1,703,966,000: PROVIDED, That there may be transferred to the Health Resources and Services Administration such amounts as may be necessary, in the discretion of the Attorney General, for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: PROVIDED FURTHER, That the Director of the Federal Prison System (FPS), where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the FPS, furnish health services to individuals committed to the custody of the FPS: PROVIDED FURTHER, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: PROVIDED FURTHER, That not to exceed $6,000 shall be available for official reception and representation expenses: PROVIDED FURTHER, That not to exceed $50,000,000 for the activation of new facilities shall remain available until September 30, 1994.

NATIONAL INSTITUTE OF CORRECTIONS

For carrying out the provisions of sections 4351-4353 of title 18, United States Code, which established a National Institute of Corrections, and for the provision of technical assistance and

advice on corrections related issues to foreign governments, $9,941,000, to remain available until expended.

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; leasing the Oklahoma City Airport Trust Facility; purchase and acquisition of facilities and remodeling and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account; $92,807,000, to remain available until expended: PROVIDED, That labor of United States prisoners may be used for work performed under this appropriation: PROVIDED FURTHER, That not to exceed 10 per centum of the funds appropriated to "Buildings and Facilities" in this Act or any other Act may be transferred to "Salaries and Expenses", Federal Prison System upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 606 of this Act: PROVIDED FURTHER, That not to exceed $14,000,000 **[*H7019]** shall be available to construct areas for inmate work programs.

FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase of (not to exceed five for replacement only) and hire of passenger motor vehicles.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed $3,066,000 of the funds of the corporation shall be available for its administrative expenses, and for services as authorized by 5 U.S.C. 3109, to be computed on an accrual basis to be determined in accordance with the corporation's prescribed accounting system in effect on July 1, 1946, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which the said accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

GENERAL PROVISIONS -- DEPARTMENT OF JUSTICE

Sec. 101. A total of not to exceed $45,000 from funds appropriated to the Department of Justice in this title shall be available only for official reception and representation expenses in accordance with distributions, procedures, and regulations established by the Attorney General.

Sec. 102. (a) Subject to subsection (b) of this section, authorities contained in Public Law 96-132, "The Department of Justice Appropriation Authorization Act, Fiscal Year 1980", shall remain in effect until the termination date of this Act or until the effective date of a Department of Justice Appropriation Authorization Act, whichever is earlier.

(b)(1) During fiscal years 1993, 1994, and 1995, with respect to any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration which is necessary for the detection and prosecution of crimes against the United States or for the collection of foreign intelligence or counterintelligence --

(A) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration may be used for purchasing property, buildings, and other facilities, and for leasing space, within the United States, the District of Columbia, and the territories and possessions of the United States, without regard to section 1341 of title 31 of the United States Code, section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)), section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255), the third undesignated paragraph under the heading of "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), section 3324 of title 31 of the United States Code, section 3741 of the Revised Statutes (41 U.S.C. 22), and subsections (a) and (c) of section 304 of the Federal Property and Administrative Service Act of 1949 (63 Stat. 395; 41 U.S.C. 254 (a) and (c)),

(B) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration may be used to establish or to acquire proprietary corporations or business entities as part of an undercover investigative operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31 of the United States Code,

(C) sums authorized to be appropriated for the Federal Bureau of Investigation and for the Drug Enforcement Administration for fiscal years 1993, 1994, and 1995, and the proceeds from such undercover operation, may be deposited in banks or other financial institutions, without regard to section 648 of title 18 of the United States Code and section 3302 of title 31 of the United States Code, and

(D) proceeds from such undercover operation may be used to offset necessary and reasonable expenses incurred in such operation, without regard to section 3302 of title 31 of the United States Code,

only, in operations designed to detect and prosecute crimes against the United States, upon the written certification of the Director of the Federal Bureau of Investigation (or, if designated by the Director, a member of the Undercover Operations Review Committee established by the Attorney General in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, as in effect on July 1, 1983) or the Administrator of the Drug Enforcement Administration, as the case may be, and the Attorney General (or, with respect to Federal Bureau of Investigation undercover operations, if designated by the Attorney General, a member of such Review Committee), that any action authorized by subparagraph (A), (B), (C), or (D) is necessary for the conduct of such undercover operation. If the undercover operation is designed to collect foreign intelligence or counterintelligence, the certification that any action authorized by subparagraph (A), (B), (C), or (D) is necessary for the conduct of such undercover operation shall be by the Director of the Federal Bureau of Investigation (or, if designated by the Director, the Assistant Director, Intelligence Division) and the Attorney General (or, if designated by the Attorney General, the Counsel for Intelligence Policy). Such certification shall continue in effect for the duration of such undercover operation, without regard to fiscal years.

(2) Notwithstanding paragraph (1), it shall not be necessary to obtain such certification for an undercover operation in order that proceeds or other money --

(A) received by an undercover agent from or at the direction of a subject of an investigation, or

(B) provided to an agent by an individual cooperating with the Government in an investigation, who received the proceeds or money from or at the direction of a subject of the investigation,

may be used as a subject of the investigation directs without regard to section 3302 of title 31 of the United States Code: PROVIDED, That the Director of the Federal Bureau of Investigation or the Administrator of the Drug Enforcement Administration, or their designees, in advance or as soon as practicable thereafter, make a written determination that such a use would further the investigation: AND PROVIDED FURTHER, That the financial audit requirements of paragraphs (5) and (6) shall apply in each investigation where such a determination has been made.

(3) As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (C) and (D) of paragraph (1), or under paragraph (2) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited in the Treasury of the United States as miscellaneous receipts.

(4) If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Federal Bureau of Investigation or the Drug Enforcement Administration, as much in advance as the Director or the Administrator, or the designee of the Director or the Administrator, determines is practicable, shall report the circumstances to the Attorney General and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5)(A) The Federal Bureau of Investigation or the Drug Enforcement Administration, as the case may be, shall conduct a detailed financial audit of each undercover investigative operation which is closed in fiscal years 1993, 1994, and 1995 --

(i) submit the results of such audit in writing to the Attorney General, and

(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(B) The Federal Bureau of Investigation and the Drug Enforcement Administration shall each also submit a report annually to the Congress specifying as to their respective undercover investigative operations --

(i) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

(ii) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

(iii) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on

Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to --

(I) the results,

(II) any civil claims, and

(III) identification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

(6) For purposes of paragraph (5) --

(A) the term "closed" refers to the earliest point in time at which --

(i) all criminal proceedings (other than appeals) are concluded, or

(ii) covert activities are concluded, whichever occurs later.

(B) the term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

(C) the terms "undercover investigative operations" and "undercover operation" mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation) --

(i) in which --

(I) the gross receipts (excluding interest earned) exceed $50,000, or

(II) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

**[*H7020]** except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph.

Sec. 103. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term or in the case of rape: PROVIDED, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

Sec. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

Sec. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: PROVIDED, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

Sec. 106. Pursuant to the provisions of law set forth in 18 U.S.C. 3071-3077, not to exceed $100,000 of the funds appropriated to the Department of Justice in this title shall be available for rewards to individuals who furnish information regarding acts of terrorism against a United States person or property.

Sec. 107. Deposits transferred from the Assets Forfeiture Fund to the Buildings and Facilities account of the Federal Prison System may be used for the construction of correctional institutions,

and the construction and renovation of Immigration and Naturalization Service and United States Marshals Service detention facilities, and for the authorized purposes of the Support of United States Prisoners', Cooperative Agreement Program.

Sec. 108. Notwithstanding 28 U.S.C. 1821, no funds appropriated to the Department of Justice in fiscal year 1993 or any prior fiscal year, or any other funds available from the Treasury of the United States, shall be obligated or expended to pay a fact witness fee to a person who is incarcerated testifying as a fact witness in a court of the United States, as defined in 28 U.S.C. 1821(a)(2).

Sec. 109. The Attorney General shall promote neighborhood revitalization by developing a plan for the use of federal funds appropriated for selected activities in the Departments of Labor, Education, Health and Human Services, Transportation, Agriculture, and Housing and Urban Development. The Attorney General shall solicit from State and local governments plans to revitalize neighborhoods using programs administered by such agencies. The Attorney General shall review and approve such plans in consultation with the Federal agency to which funds are appropriated.

Sec. 110. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in title I of this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased or decreased by more than 5 percent by any such transfers: PROVIDED, That this section shall not apply to any appropriation made available in title I of this Act under the heading, "Office of Justice Programs, Justice Assistance": PROVIDED FURTHER, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 606 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

RELATED AGENCIES

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, $7,979,000, of which $2,000,000 is for regional offices and $700,000 is for civil rights monitoring activities authorized by section 5 of Public Law 98-183: PROVIDED, That not to exceed $20,000 may be used to employ consultants: PROVIDED FURTHER, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: PROVIDED FURTHER, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more than 75 billable days, with the exception of the Chairman who is permitted 125 billable days.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964, as amended (29 U.S.C. 206(d) and 621-634), the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); nonmonetary awards to private citizens; not to exceed $25,000,000, for payments to State and local

enforcement agencies for services to the Commission pursuant to title VII of the Civil Rights Act of 1964, as amended, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, $218,682,000: PROVIDED, That the Commission is authorized to make available for official reception and representation expenses not to exceed $2,500 from available funds.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by law (5 U.S.C. 5901-02); not to exceed $450,000 for land and structures; not to exceed $300,000 for improvement and care of grounds and repair to buildings; not to exceed $4,000 for official reception and representation expenses; purchase (not to exceed sixteen) and hire of motor vehicles; special counsel fees; and services as authorized by 5 U.S.C. 3109; $68,536,000, of which not to exceed $300,000 shall remain available until September 30, 1994, for research and policy studies.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; $17,429,000: PROVIDED, That not to exceed $2,000 shall be available for official reception and representation expenses.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $2,000 for official reception and representation expenses; $82,700,000: PROVIDED, That notwithstanding any other provision of law, not to exceed $13,500,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a)) shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: PROVIDED FURTHER, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 1993, so as to result in a final fiscal year appropriation estimated at not more than $69,200,000: PROVIDED FURTHER, That any fees received in excess of $13,500,000 in fiscal year 1993 shall remain available until expended, but shall not be available for obligation until fiscal year 1994: PROVIDED FURTHER, That none of the funds in this Act shall be available for obligation for expenses authorized by section 151(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242, 105 Stat. 2282-2284).

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed $3,000 for official reception and representation expenses, $157,485,000, of which not to exceed $10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions and of which not to exceed $100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to securities matters, development and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including: (i) such incidental expenses as meals taken in the course of such attendance, (ii) any travel or transportation to or from such meetings, and (iii) any other related lodging or subsistence.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by The State Justice Institute Authorization Act of 1988 (Public Law 100-690 (102 Stat. 4466-4467)), $13,550,000 to remain available until expended: PROVIDED, That not to exceed $2,500 shall be available for official reception and representation expenses.

This title may be cited as the "Department of Justice and Related Agencies Appropriations Act, 1993".

TITLE II -- DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, $178,583,000, to remain available until expended, of which not to exceed $2,618,000 may be transferred to the "Working Capital Fund".

INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Regional Centers for the Transfer of Manufacturing Technology and the Advanced Technology **[*H7021]** Program and, notwithstanding any other provision of law, the State Extension Services Program of the National Institute of Standards and Technology, $66,986,000, to remain available until expended.

FACILITIES

For expenses incurred, as authorized by the Act of September 2, 1958 (15 U.S.C. 278c-278e), in the acquisition, construction, improvement, alteration, or emergency repair of buildings, grounds, and other facilities, $5,300,000, to remain available until expended, of which not to exceed $33,000 may be transferred to the "Working Capital Fund".

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including acquisition, maintenance, operation, and hire of aircraft; 439 commissioned officers on the active list; as authorized by 31 U.S.C. 1343 and 1344; construction of facilities, including initial equipment as authorized by 33 U.S.C. 883i; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and alteration, modernization, and relocation of facilities as authorized by 33 U.S.C. 883i; $1,452,139,000, to remain available until expended and in addition, $33,104,000 shall be derived from the Airport and Airway Trust Fund as authorized by 49 U.S.C. app. 2205(d); and in addition, $54,208,000 shall be derived by transfer from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries": PROVIDED, That grants to States pursuant to section 306 and 306(a) of the Coastal Zone Management Act, as amended, shall not exceed $2,000,000 and shall not be less than $500,000.

COASTAL ZONE MANAGEMENT FUND

Of amounts collected pursuant to section 6209 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), $7,800,000 for projects and grants authorized by 16 U.S.C. 1455, 1455a, and 1455b, notwithstanding the provisions of 16 U.S.C. 1456a(b)(2).

CONSTRUCTION

For repair and modification of, and additions to, existing facilities and construction of new facilities, and for facility planning and design and land acquisition not otherwise provided for the National Oceanic and Atmospheric Administration, $51,316,000, to remain available until expended.

FLEET MODERNIZATION, SHIPBUILDING AND CONVERSION

For expenses necessary for the construction, acquisition, leasing, or conversion of vessels, including related equipment to maintain the existing fleet and to continue planning the modernization of the fleet, for the National Oceanic and Atmospheric Administration, $2,000,000, to remain available until expended.

FISHING VESSEL AND GEAR DAMAGE FUND

For carrying out the provisions of section 3 of Public Law 95-376, not to exceed $1,306,000, to be derived from receipts collected pursuant to 22 U.S.C. 1980 (b) and (f), to remain available until expended.

FISHERMEN'S CONTINGENCY FUND

For carrying out the provisions of title IV of Public Law 95-372, not to exceed $1,025,000, to be derived from receipts collected pursuant to that Act, to remain available until expended.

FOREIGN FISHING OBSERVER FUND

For expenses necessary to carry out the provisions of the Atlantic Tunas Convention Act of 1975, as amended (Public Law 96-339), the Magnuson Fishery Conservation and Management Act of 1976, as amended (Public Law 100-627) and the American Fisheries Promotion Act (Public Law 96-561), there are appropriated from the fees imposed under the foreign fishery observer program authorized by these Acts, not to exceed $565,000, to remain available until expended.

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the general administration of the Department of Commerce provided for by law, including not to exceed $3,000 for official entertainment, $31,712,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. App. 1-11 as amended by Public Law 100-504), $15,470,000.

BUREAU OF THE CENSUS

SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, $125,125,000.

PERIODIC CENSUSES AND PROGRAMS

For expenses necessary to collect and publish statistics for periodic censuses and programs provided for by law, $181,689,000, to remain available until expended.

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce, $39,353,000, to remain available until September 30, 1994.

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and engaging in trade promotional activities abroad without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 1517; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding ten years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $327,000 for official representation expenses abroad; and purchase of passenger motor vehicles for official use abroad not to exceed $30,000 per vehicle; obtain insurance on official motor vehicles, rent tie lines and teletype equipment; $194,149,000, to remain available until expended: PROVIDED, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to 15 U.S.C. 4912; and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities. Notwithstanding

any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: PROVIDED FURTHER, That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed twelve: PROVIDED FURTHER, That funds shall be available to carry out export promotion programs notwithstanding the provisions of section 201 of Public Law 99-64.

EXPORT ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; rental of space abroad for periods not exceeding ten years, and expenses of alteration, repair, or improvement; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $25,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law; $39,159,000, to remain available until expended: PROVIDED, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, $37,889,000 of which $23,816,000 shall remain available until expended: PROVIDED, That not to exceed $14,073,000 shall be available for program management for fiscal year 1993.

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the United States Travel and Tourism Administration including travel and tourism promotional activities abroad for travel to the United States and its possessions without regard to 44 U.S.C. 501, 3702 and 3703; and including employment of American citizens and aliens by contract for services abroad; rental of space abroad for periods not exceeding five years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; advance of funds under contracts abroad; payment of tort claims in the manner authorized in the first paragraph of 28 U.S.C. 2672, when such claims arise in foreign countries; and not to exceed $15,000 for official representation expenses abroad; $14,132,000, to remain available until expended.

PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Patent and Trademark Office provided for by law, including defense of suits instituted against the Commissioner of Patents and Trademarks; $89,129,000, to be derived from deposits in the Patent and Trademark Office Fee **[*H7022]** Surcharge Fund as authorized by law: PROVIDED, That the amounts made available under the Fund shall not exceed amounts deposited; and such fees as shall be collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376, to remain available until expended.

TECHNOLOGY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Technology Administration, $4,311,000.

NATIONAL TECHNICAL INFORMATION SERVICE

NTIS REVOLVING FUND

For establishment of a National Technical Information Service Revolving Fund, $8,000,000 without fiscal year limitation: PROVIDED, That unexpended balances in Information Products and Services shall be transferred to and merged with this account, to remain available until expended. Notwithstanding 15 U.S.C. 1525 and 1526, all payments collected by the National Technical Information Service in performing its activities authorized by Chapters 23 and 63 of Title 15 of the United States Code shall be credited to this Revolving Fund. Without further appropriations action, all expenses incurred in performing the activities of the National Technical Information Service, including modernization, capital equipment and inventory, shall be paid from the fund. A business-type budget for the fund shall be prepared in the manner prescribed by 31 U.S.C. 9103.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration, $17,198,000, to remain available until expended.

public telecommunications facilities, planning and construction

For grants authorized by section 392 of the Communications Act of 1934, as amended, $21,320,000, to remain available until expended as authorized by section 391 of said Act, as amended: PROVIDED, That not to exceed $1,500,000 shall be available for program administration as authorized by section 391 of the Communications Act of 1934, as amended: PROVIDED FURTHER, That notwithstanding the provisions of section 391 of the Communications Act of 1934 as amended, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year.

Mr. SMITH of Iowa (during the reading). Mr. Chairman, I know of no amendment until after line 21, page 47. Therefore, I ask unanimous consent that the bill, through line 21, page 47, be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. Are there any points of order against the material contained in the section of the bill? If not, are there any amendments?

Ms. ROS-LEHTINEN. Mr. Chairman, I move to strike the last word. I urge my colleagues to vote against the Alexander amendment because TV Marti may very well turn out to be an important tool in helping to bring about the liberation of Cuba and it should not be shut down.

The critics of TV Marti believe that the cold war is over. But my friends, let me assure you that the cold war is very much alive in Cuba. The people of Cuba are being brutalized every day by the ruthless Communist dictator, Fidel Castro. The people of Cuba should not be forgotten or abandoned by this Government.

Getting uncensured news and information to the Cuban people is the least we can do for these brave souls. We need to continue arming the Cuban people with accurate information, just like we did for Eastern Europe. Even though Castro is trying to jam TV Marti, we should not be discouraged because we did not stop transmitting in Europe when the Communists tried to jam broadcasts by the free world.

One need only look at the recent developments in the Communist world to be reminded of the benefits of the different freedom broadcast that the free world has transmitted for over 40 years. If our predecessors had not had the endurance to stand tough and continue transmitting to the freedom loving people in the Communist world for over 40 years, the Iron Curtain may never have come down.

I urge my colleagues to not put out this light of hope we are sending to the Cuban people and vote down this bad amendment.

Mr. ALEXANDER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will not take the full 5 minutes, but I am the author of the amendment to which the gentlewoman from Florida referred a minute ago. We will debate that amendment at the proper point in the bill.

The rule provides that that amendment shall have 30 minutes for debate. I will not debate the amendment at this time except to say that the amendment has very little or nothing to do with the policy toward Cuba. It has little or nothing to do with Castro.

It merely has to do with the fact that we are wasting about $18 million a year broadcasting to a limited, or no, audience at all. We will get to that point during the debate, but I wanted to reply to the statement of the gentlewoman in order to clear up any misimpression that may have resulted as a result of her remarks.

The CHAIRMAN pro tempore (Mr. Frank of Massachusetts). Are there further amendments to that portion of the bill up to line 21 of page 47? If not, the Clerk will read.

The Clerk read as follows:

ECONOMIC DEVELOPMENT ADMINISTRATION

economic development assistance programs

For grants under the Trade Adjustment Assistance Program, as authorized by 19 U.S.C. 2024, and for economic development assistance as provided by the Public Works and Economic Development Act of 1965, as amended, the Public Law 91-304, and such laws that were in effect

immediately before September 30, 1982, $235,462,000: PROVIDED, That none of the funds appropriated or otherwise made available under this heading may be used directly or indirectly for attorneys' or consultants' fees in connection with securing grants and contracts made by the Economic Development Administration: PROVIDED FURTHER, That during fiscal year 1993, the Economic Development Administration shall not make any reduction in individual grant amounts to university centers which would result in grants below 93 per centum of the individual grant amounts made to university centers in fiscal year 1992, except on the basis of failing to conform to the EDA grant agreements in place for fiscal year 1993.

AMENDMENT OFFERED BY MR. BURTON OF INDIANA

Mr. BURTON of Indiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Burton of Indiana: Page 47, strike out line 23 and all that follows through line 16, page 48.

The CHAIRMAN pro tempore. Pursuant to the rule, the gentleman from Indiana [Mr. Burton] is recognized for 10 minutes. Is there a Member in opposition to the amendment who wishes to claim the time in opposition?

Mr. SMITH of Iowa. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN pro tempore. The gentleman from Iowa [Mr. Smith] will be recognized for 10 minutes in opposition.

The Chair recognizes the gentleman from Indiana [Mr. Burton].

Mr. BURTON of Indiana. Mr. Chairman, I yield myself such time as I may consume.

First of all, I want to compliment the committee for doing a pretty good job.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Kentucky.

Mr. ROGERS. Mr. Chairman, did the gentleman say just "a pretty good job" is all?

Mr. BURTON of Indiana. Mr. Chairman, the gentleman knows I am giving him faint praise. And that is better than most.

Let me just say that I think the committee has done a pretty good job. However, there are some things in here that I think should be looked into and should be cut.

The administration, in their budget estimate for 1993 in the committee report, wants to zero out the funds for the economic development assistance programs. That totals $235 million. The Senate has partially acceded to the wishes of the White House by cutting that portion of the bill to $150 million.

I mentioned to the ranking Republican and to the chairman of the committee that I thought we ought to cut this, I would like to cut it all out, but I was willing to make a compromise. Unfortunately, they were not of a mind to do so.

Let me just say that we have severe fiscal problems facing this Nation. I have said time and again and will continue to say on this floor that unless we get control of spending, we are likely to see an economic disaster unparalleled in American history in the next 5, 6, 7 years.

The deficit is $400 billion approximately now. If we look at the projections **[*H7023]** over the next few years, it is going to go up and up and up. And the national debt, according to the Federal Reserve Board, by the year 2000 will be $13.5 trillion. And 10 years ago it was $1 trillion.

Think about that. It went from $1 to $4 trillion in 10 years. It took us 200 years to get to $1 trillion in debt and 10 years to get to $4 trillion in debt, and in 7 1/2 years we will be $13.5 trillion in debt, at least.

The bottom line is, we will not even have enough tax revenues coming in to pay the interest on the debt, so what we will have to do is allow the Federal Reserve Board to monetize at least part of the debt. That means print money to pay off part of the debt. That means there will be more and more money in circulation chasing fewer and fewer products. What that means is that we are going to see bread at $25 or $30 a loaf, milk at $25 or $30 a carton for a quart. We will have to deal with that.

I say to my colleagues, this is an amendment that we should pass. This is something we can do without. The administration has not asked for it. They want to zero out this $235 million. It is pork, for the most part.

Let me just tell the Members what is in here. In the report language it allows for the expansion of the Worcester, MA, Centerum arena and exhibition hall. This should be taken care of by the local government, not by the Federal Government. Why should we be dealing with the Worcester, MA Centerum arena and exhibition hall? Yet there are millions of dollars in here for that.

There is money in here for planning a study for the biotechnology center in Boston, MA. Why should we be paying for that, the taxpayers from across the country? There is money in here for a planning study for a biotechnology medical center in St. Louis, MO, and it goes on and on and on.

These are pork barrel projects for specific Congressman who want to go back to their districts and tell their constituents, "Look what I did for you," at the expense of the taxpayers in other parts of the country. The bottom line, Mr. Chairman, as I have said before, is we need to cut out the fat, the waste, the pork in these spending bills.

This is only a small amount, $235 million, but I submit to my colleagues that it is something that we should do. If we do that and cap the entitlements at some point in the future, which is another major problem we are going to face, then we could come to grips with the deficit and maybe head off the economic disaster that I think is out there in the future if we do not deal with the problem.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. Mr. Chairman, I yield 2 minutes to the gentleman from Kentucky [Mr. Rogers].

Mr. ROGERS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, let me say at the outset that we are all indebted to the gentleman from Indiana [Mr. Burton] for his efforts at trying to cut spending, and while we all generally support that effort, I must say on the Economic Development Administration, this is an agency that attempts to help the

most distressed portions of the country deal with not only the general hard economic times that they are generally always in, but especially now in these very difficult recessionary times, they are suffering worse than ever.

The money in the Economic Development Administration generally have gone to communities to help them help themselves. That is what I believe we should be standing for, seed money to help communities develop industrial parks, to recruit jobs to those communities, grants for sewer development, for water districts, for the general things that help build up a region economically in order that it can become tax-producing, and, therefore, bring the money back into the Treasury.

There is no way we can quantify this, but I think I can safely say, Mr. Chairman, that the money that we invest in the EDA that in turn are being invested in the communities, producing jobs, in turn produce revenues, and I dare say that the Federal Government makes money off of this seed money that it invests in the betterment of our communities, not to mention the pride that comes from that person going off welfare into a paying job in which he or she earns their upkeep. That sense of pride, that sense of self-independence, that sense of self-respect that comes from employment, gainful employment that cannot be purchased except through, in my judgment, the investment that we are making in the EDA.

Mr. BURTON of Indiana. Mr. Chairman, I yield myself such time as I may consume. First of all, let me say that the gentleman from Kentucky [Mr. Rogers], for whom I have the highest respect, indicated that this money was going for needy communities who are having a difficult time of it, and we were getting our money back several times over.

I wish the gentleman would explain to me how the expansion of a Worcester, MA, Centerum arena and exhibition hall is solving an impoverished area's problems. Give me a break. A planning study for a biotechnology center in Boston, MA? Give me a break. A planning study for a biomedical technology center in St. Louis, MO? Give me a break.

The Members know this is Federal money going for a special pork barrel project that is in this report language that we cannot get at, hardly, to help the guys back home. It is just more pork, and we should take it out. The administration, in their budget request, has zeroed this out. They do not have anything in it for this purpose. The Senate has already cut it from $235 million down to $150 million, so they can see the handwriting on the wall.

All I am saying is that this should be cut entirely, but at the very least, it should be cut at least proportionate to the other expenses in the bill.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Indiana. I am happy to yield to the gentleman from Kentucky.

Mr. ROGERS. Mr. Chairman, I was just flipping through the 1991 list for the State of Indiana, and there are grants for Jeffersonville, IN; Ferdinand, IN; Huntingburg, IN; Loogootee, IN; Bloomington, IN.

Mr. BURTON of Indiana. Loogootee, IN.

Mr. ROGERS. If the gentleman will continue to yield, Loogootee, IN.

The CHAIRMAN. And it is Worcester, MA.

Mr. ROGERS. Francesville; Versailles, IN; Scott/Washington, IN; Carlisle, IN; Terre Haute, IN; and so forth.

I would ask the gentleman, are those communities in need of these projects, like the water and sewer expansions in Carlisle; the revolving loan fund for small business in Scott County?

Mr. BURTON of Indiana. Mr. Chairman, I think the gentleman has made his point, if I might reclaim my time. I stand by what I said earlier. Whether it is Indiana or Kentucky or Missouri or Massachusetts, the Federal Government should not be dealing with these projects right now. We are in a fiscally tight situation. This is $235 million that has not been asked for by the administration. The Senate has already cut it to $150 million. We have a terrible deficit problem facing this country.

The Members know the deficit is over $4 trillion, a 400-percent increase, and they know that according to the Fed, that we are heading to a $13.5 trillion debt in just 10 years, and that is going to cause economic chaos. We need to prioritize spending. Whether it is Indiana or Kentucky or wherever, we are going to have to prioritize spending.

Mr. Chairman, I would say to my colleague that I stand by what I said. We ought to cut this $235 million out. We have to make hard choices around here.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of Iowa. I yield 2 minutes to the gentleman from Arkansas [Mr. Alexander].

(Mr. ALEXANDER asked and was given permission to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, it is impossible in 2 minutes to separate all the apples and oranges and bananas that have been **[*H7024]** displayed in this debate, but I have a town in my district named Cotton Plant. It is in a county, Woodruff, that has double-digit chronic unemployment, over 22 percent, as I recall.

That town has applied for an EDA grant with which to build a new sewage system to receive the effluent from a new catfish processing plant that will hire 60 people. That money will make money if it is granted. That money will pay for itself in a very short period of time, because we have unemployed people receiving unemployment that will be employed as a result of this grant. We save money from unemployment; we make money from income from taxes paid on earnings.

It is true all over this country. There are many deserving projects like the Cotton Plant project, way off in Arkansas, which the Members probably never heard of, that are waiting for the opportunity to put people to work with a small investment from the Federal Government that is provided by the Economic Development Administration.

Mr. Chairman, I oppose this amendment. I think it is ill conceived. We need to try to encourage employment; and in order to produce jobs, sometimes we need to invest money to make money.

Mr. SMITH of Iowa. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. Kolter].

Mr. KOLTER. Mr. Chairman, I rise in opposition to the Burton amendment. I am really, quite frankly, surprised that he is offering this amendment, because we are doing him a favor, as we are doing the President a favor. With our bill here, we are providing funds. We are providing jobs --

needed jobs -- for the laborer, for the cement finisher, the carpenter, the electrician. This is far more than some of the Members are doing.

Really, I say to the gentleman from Indiana [Mr. Burton], I think we are doing everybody a favor here with our bill. So I would ask the membership here to vote in opposition to the Burton amendment.

Mr. SMITH of Iowa. Mr. Chairman, I have the right to close debate. Does the gentleman from Indiana have any further requests for time?

Mr. BURTON of Indiana. I will close the debate on our side.

The CHAIRMAN pro tempore (Mr. Frank of Massachusetts). The gentleman from Indiana [Mr. Burton] is recognized for 3 minutes.

Mr. BURTON of Indiana. Mr. Chairman, I go to the well practically every day we have an authorization or an appropriation bill up, and every time I try to cut spending for any kind of a program, I do not care what it is, there are 900 good reasons that we should not cut it. As a result, we continue to see the deficit climb, not because we are not raising enough tax revenues, because 10 years ago we brought in $500 million in tax revenues, and today we are bringing in $1.3 trillion. We have almost tripled the amount of tax revenues, and yet I go down to that well every time we have an authorization or an appropriation bill and everybody says this is something we cannot do without. And even though we have tripled the tax revenues, tripled the tax revenues, we are still $400 billion short, and we have the largest debt in U.S. history by 400 percent over what it was 10 years ago. We know according to projections that it is going to be $13.5 trillion, $13.5 trillion in about 6 1/2 or 7 years.

Now, I would just like to ask my colleagues when are we ever going to have something that you think we ought to cut? The people across this country, the taxpayers, want us to get control of spending. It is costing jobs, it is running businesses overseas. The mandates we are putting on their backs are killing the economy, and yet we just continue to do it.

So I say to my colleagues, if not now, when? If not this, what? When are you going to go along with some kind of cuts, some kind of reductions?

The appropriation bills we have had so far this year are $42 billion above last year's, $42 billion above last year's, and we had a $400 billion deficit then. When are we going to start cutting?

I submit this is a good place to start.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. EARLY. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Massachusetts.

Mr. EARLY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, the gentleman makes the perfect case so far as the deficit has gone from $1 trillion in 10 years to $4 trillion because of a Republican President, and then he comes on the floor and he talks about growth. If you are going to grow out of problems anywhere, it is in EDA where it creates jobs and puts people to work.

The gentleman just wants to make a political speech day in, day out about cutting. He should be cutting things like the space station and the super collider that are billions and billions of dollars, but the gentleman will not do that. The gentleman wants to talk, and talk, and talk, and do nothing.

This deficit has gone, as he states, from $1 trillion to $4 trillion in 10 years. Who has been President in those 10 years? Ronald Reagan and President Bush. We will make our correction in the deficit when we change the Presidency, and the gentleman from Indiana will lead the fight to make that change.

I want to thank the gentleman for yielding.

Mr. BURTON of Indiana. Mr. Chairman, I did not yield back my time, and how much time did I have remaining?

The CHAIRMAN. The gentleman from Indian has 1 minute remaining.

Mr. BURTON of Indiana. Mr. Chairman, I yield myself my remaining 1 minute.

Mr. Chairman, let me just say in answer to the gentleman from Massachusetts, and he probably thought I was out of time, but surprise: The fact of the matter is that I did vote to cut the super collider and I did vote to cut the space station, so do not give me that stuff.

But the second thing I say to the gentleman from Massachusetts is all spending originates in the U.S. House of Representatives, this place, not the White House. And so you cannot pass the buck. We appropriate, we raise the taxes, and we spend the money. All he can do is veto it. So do not give the American people that kind of bunk that the White House is to blame. We are the ones who spend the money and appropriate it.

Mr. SMITH of Iowa. Mr. Chairman, I yield myself the remainder of my time.

Mr. Chairman, let me say to the gentleman from Indiana I agree with him on what he said about authorizations. Members come over here and vote for authorization bills, but when it comes to the appropriations they do not want to back them up with funding. Authorizations should not be voted on, expectations should not be raised unless Members intend to fully support providing funding for these programs.

In the case of the EDA, we have had several votes on the House floor and have supported the EDA authorizations. In my judgment, we have the EDA at about the lowest level possible to continue to use it as a seed program and have it as a national program. I might also mention that the administration was recently anxious to use the EDA title IX program after the Los Angeles riots.

As the gentleman from Kentucky said very well, it is just seed money. There are many communities that have the ability to create jobs, but they need just a little more for a planning study, or to get the ability to float bonds to finance a project. That is all we have been doing in EDA recently, just using it for seed money.

This is a time of high unemployment. Small businesses cannot go out and buy a tract of land and develop it themselves. They have to depend upon municipalities and any encouragement that they get for their development projects.

This is just seed money, and I think that of all times this is a bad time to cut out the seed money. The gentleman's amendment would cut out all of the seed money I mentioned in here for EDA.

We have voted several times in the House to support EDA, and I ask Members to support it again today by voting against the amendment of the gentleman from Indiana.

**[*H7025]** The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. Burton].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BURTON of Indiana. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were -- ayes 76, noes 339, not voting 19, as follows:

(See Roll No. 350 in the ROLL segment.)

Messrs. McCANDLESS, ZELIFF, and KLECZKA changed their vote from "ayes" to "no."

Mr. RHODES and Mr. HALL of Texas changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. McDADE. Mr. Chairman, I ask unanimous consent that between the hours of 4 and 5 o'clock all votes be postponed until 5 o'clock in order that Members can conclude their business. There are a lot of meetings going on in the Capitol.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. McDade] has made a request which the Chair does not have the authority to grant in the Committee of the Whole.

PARLIAMENTARY INQUIRIES

Mr. McDADE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. McDADE. Mr. Chairman, is there any way we can make the request, other than rising?

The CHAIRMAN. The Chair is unaware of any.

Mr. McDADE. Mr. Chairman, could we ask to suspend the rules by unanimous consent and do the unanimous-consent request?

The CHAIRMAN. The gentleman cannot even do that in the Committee of the Whole. The gentleman can move that the Committee rise and request it in the House.

Mr. McDADE. Would it be agreeable, Mr. Chairman, that we rise for 10 seconds, do the unanimous-consent request, and postpone all voting to roll it over until 5 o'clock?

Mr. SMITH of Iowa. If the gentleman would include in his unanimous-consent request that that will also conclude all debate on all amendments and amendments thereto. We should be done by then. There is no excuse to be here after that.

Mr. McDADE. I so amend my unanimous-consent request.

The CHAIRMAN. The Chair would remind the gentleman that he has just told the gentleman he cannot entertain that unanimous-consent request.

Mr. SMITH of Iowa. Mr. Chairman, I move that the Committee do now rise temporarily.

The CHAIRMAN. The question is on the motion offered by the gentleman from Iowa [Mr. Smith].

The motion was agreed to.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. Volkmer) having assumed the chair, Mr. Brown, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5678) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes, had come to no resolution thereon.

[Roll No. 350]

AYES -- 76

| | | |
|---|---|---|
| Allard | Andrews (TX) | Archer |
| Armey | Atkins | Baker |
| Ballenger | Barrett | Bereuter |
| Bilirakis | Bunning | Burton |
| Callahan | Coble | Combest |
| Condit | Cox (CA) | Crane |
| Cunningham | Dannemeyer | DeLay |
| Dingell | Doolittle | Dornan (CA) |
| Dreier | Duncan | Ewing |
| Fawell | Fields | Gingrich |
| Goss | Gunderson | Hall (TX) |
| Hancock | Hansen | Hastert |
| Hefley | Holloway | Hopkins |
| Hunter | Ireland | James |
| Johnson (CT) | Johnson (TX) | Kasich |
| Klug | Kolbe | Kyl |
| Laughlin | Lewis (FL) | McCollum |
| Miller (WA) | Moorhead | Nussle |
| Oxley | Packard | Penny |
| Petri | Porter | Ramstad |
| Rhodes | Rohrabacher | Roth |
| Schaefer | Schulze | Sensenbrenner |
| Smith (OR) | Solomon | Stearns |
| Stump | Taylor (NC) | Thomas (CA) |
| Walker | Wylie | Young (FL) |
| Zimmer | | |

NOES -- 339

| | | |
|---|---|---|
| Abercrombie | Alexander | Allen |
| Anderson | Andrews (ME) | Andrews (NJ) |
| Annunzio | Anthony | Applegate |
| Aspin | AuCoin | Bacchus |
| Barnard | Bateman | Beilenson |
| Bennett | Bentley | Berman |
| Bevill | Bilbray | Blackwell |
| Bliley | Boehlert | Boehner |
| Bonior | Borski | Boucher |
| Brewster | Brooks | Browder |
| Brown | Bruce | Bryant |
| Bustamante | Byron | Camp |
| Campbell (CA) | Campbell (CO) | Cardin |
| Carper | Carr | Chandler |
| Chapman | Clay | Clement |
| Clinger | Coleman (MO) | Coleman (TX) |
| Collins (IL) | Cooper | Costello |
| Coughlin | Cox (IL) | Coyne |
| Cramer | Darden | Davis |
| de la Garza | DeFazio | DeLauro |
| Dellums | Derrick | Dickinson |
| Dicks | Dixon | Donnelly |
| Dooley | Dorgan (ND) | Downey |
| Durbin | Dwyer | Dymally |
| Early | Eckart | Edwards (CA) |
| Edwards (OK) | Edwards (TX) | Emerson |
| Engel | English | Erdreich |
| Espy | Evans | Fascell |
| Fazio | Feighan | Fish |
| Flake | Foglietta | Ford (MI) |
| Ford (TN) | Frank (MA) | Franks (CT) |
| Frost | Gallegly | Gallo |
| Gejdenson | Gekas | Gephardt |
| Geren | Gibbons | Gilchrest |
| Gillmor | Gilman | Glickman |
| Gonzalez | Goodling | Gordon |
| Gradison | Grandy | Green |
| Hall (OH) | Hamilton | Hammerschmidt |
| Harris | Hayes (IL) | Hayes (LA) |
| Hefner | Henry | Herger |
| Hertel | Hoagland | Hobson |
| Hochbrueckner | Horn | Horton |
| Houghton | Hoyer | Hubbard |
| Huckaby | Hughes | Hutto |

| | | |
|---|---|---|
| Inhofe | Jacobs | Jefferson |
| Jenkins | Johnson (SD) | Johnston |
| Jones (GA) | Jones (NC) | Jontz |
| Kanjorski | Kaptur | Kennedy |
| Kennelly | Kildee | Kleczka |
| Kolter | Kopetski | Kostmayer |
| LaFalce | Lagomarsino | Lancaster |
| Lantos | LaRocco | Leach |
| Lehman (CA) | Lehman (FL) | Lent |
| Levin (MI) | Levine (CA) | Lewis (CA) |
| Lewis (GA) | Lightfoot | Lipinski |
| Livingston | Lloyd | Long |
| Lowey (NY) | Luken | Machtley |
| Manton | Markey | Marlenee |
| Martinez | Matsui | Mazzoli |
| McCandless | McCloskey | McCrery |
| McCurdy | McDade | McDermott |
| McEwen | McGrath | McHugh |
| McMillan (NC) | McMillen (MD) | McNulty |
| Meyers | Mfume | Michel |
| Miller (CA) | Miller (OH) | Mineta |
| Mink | Moakley | Molinari |
| Mollohan | Montgomery | Moody |
| Moran | Morella | Morrison |
| Murphy | Murtha | Myers |
| Nagle | Natcher | Neal (MA) |
| Neal (NC) | Nichols | Nowak |
| Oakar | Oberstar | Obey |
| Olin | Olver | Ortiz |
| Orton | Owens (NY) | Owens (UT) |
| Pallone | Panetta | Parker |
| Pastor | Patterson | Paxon |
| Payne (NJ) | Payne (VA) | Pease |
| Pelosi | Perkins | Peterson (FL) |
| Peterson (MN) | Pickett | Pickle |
| Poshard | Price | Pursell |
| Quillen | Rahall | Rangel |
| Ravenel | Ray | Reed |
| Regula | Richardson | Ridge |
| Riggs | Rinaldo | Ritter |
| Roberts | Roe | Roemer |
| Rogers | Ros-Lehtinen | Rose |
| Rostenkowski | Roukema | Rowland |
| Roybal | Russo | Sabo |
| Sanders | Sangmeister | Santorum |
| Sarpalius | Sawyer | Saxton |

| | | |
|---|---|---|
| Scheuer | Schiff | Schroeder |
| Schumer | Serrano | Sharp |
| Shaw | Shays | Shuster |
| Sikorski | Sisisky | Skaggs |
| Skeen | Skelton | Slattery |
| Slaughter | Smith (FL) | Smith (IA) |
| Smith (NJ) | Smith (TX) | Snowe |
| Spence | Spratt | Staggers |
| Stark | Stenholm | Stokes |
| Studds | Sundquist | Swett |
| Swift | Synar | Tallon |
| Tanner | Tauzin | Taylor (MS) |
| Thomas (GA) | Thomas (WY) | Thornton |
| Torres | Torricelli | Traficant |
| Unsoeld | Upton | Valentine |
| Vander Jagt | Vento | Visclosky |
| Volkmer | Vucanovich | Walsh |
| Washington | Waters | Waxman |
| Weber | Weiss | Weldon |
| Wheat | Whitten | Williams |
| Wilson | Wise | Wolf |
| Wolpe | Wyden | Yates |
| Yatron | Young (AK) | Zeliff |

NOT VOTING -- 19

| | | |
|---|---|---|
| Ackerman | Barton | Boxer |
| Broomfield | Collins (MI) | Conyers |
| Gaydos | Guarini | Hatcher |
| Hyde | Lowery (CA) | Martin |
| Mavroules | Mrazek | Savage |
| Solarz | Stallings | Towns |
| Traxler | | |

Civil Rights Authorization Act of 1992;

23. H.R. 3795, to establish divisions in the Central Judicial District of California;

24. H.R. 4412, relating to fair use of copyrighted works;

25. H.R. 5475, providing policies with respect to approval of bills providing for patent term extensions;

26. H.R. 994, Liberian Relief and Rehabilitation Act;

27. H. Con. Res. 348, Philippines;

28. H.R. 1219, Alaska Peninsula wilderness designation;

29. H.R. 5686, technical amendments to certain Federal Indian statutes,

30. H.R. 5397, Abandoned Barge Act of 1992;

31. H.R. 4310, National Marine Sanctuaries Reauthorization and Improvement Act;

32. H.R. 5350, Great Lakes Fish and Wildlife Tissue Bank;

33. H.R. 5013, Wild Bird Conservation Act;

34. H.R. 3486, Marine Mammal Health and Stranding Response Act;

35. H.R. 5481, F.A.A. Civil Penalty Administration Assessment Act of 1992;

36. H.R. 5194, Juvenile Justice Delinquency Prevention Amendments;

37. H.R. 5630, Head Start Improvement Act; and

38. H.R. 3453, to convey certain properties to the Black Hills Workshop and Training Center.

(RECORDED VOTES ORDERED ON SUSPENSIONS WILL BE POSTPONED UNTIL THE END OF LEGISLATIVE BUSINESS ON TUESDAY, AUGUST 4.)

## C. July 17, 1997: 1997 House Oversight Hearings –Prepared Remarks of Witnesses

JULY 17, 1997, THURSDAY

**SECTION:** IN THE NEWS

**LENGTH:** 3413 words

**HEADLINE:** PREPARED STATEMENT OF
THE HONORABLE MARY FRANCES BERRY
CHAIRPERSON, U.S. COMMISSION ON CIVIL RIGHTS
BEFORE THE HOUSE JUDICIARY COMMITTEE
THE CONSTITUTION SUBCOMMITTEE JULY 17, 1997

**BODY:**
Mr. Chairman and members of the Subcommittee, I am pleased to testify today on behalf of the reauthorization of the U.S. Commission on Civil Rights.

I appear before you representing the eight part-time Commissioners who comprise our diverse, bipartisan body. In addition to serving as Chairperson, I also hold the position of Geraldine R. Segal Professor of American Social Thought, professor of history and adjunct professor of law at the University of Pennsylvania. My seven colleagues are: Vice Chairperson Cruz Reynoso, Special Counsel to the law firm of Kaye, Scholer, Fierman, Hays and Handler and professor of law at the UCLA Law School; Carl A. Anderson, vice president for public policy for the Knights of Columbus, and dean, vice president, and professor of family law at the North American Campus of the Pontifical John Paul II Institute for Studies on Marriage and Family; Robert P. George, associate professor of politics at Princeton University; A. Leon Higginbotham, Jr., Of Counsel to the law firm of Paul, Weiss, Rifkind, Wharton, and Garrison, and public service professor of jurisprudence at Harvard University; Constance Homer, guest scholar in governmental studies at the Brookings Institution; Russell G. Redenbaugh, partner and director of Cooke & Bieler, Inc., and cofounder and head of Kairos, Inc.; Yvonne Y. Lee, president of Yvonne Lee Consultants.

Though the members of the Commission represent a range of backgrounds, talents, and viewpoints on civil rights issues, we are all committed to fulfilling the Commission's legislative mandate. We each believe there is a need for a strong and independent Federal agency whose primary mission is to illuminate, through careful and objective factfinding, ways of strengthening civil rights for all Americans. Accordingly, the Commissioners are unanimous in recommending that the Commission be reauthorized in fiscal year 1998 and authorized to receive an appropriation sufficient to carry out its broad mandate. For fiscal year 1998, the Commission has requested an appropriation of $11 million, consistent with the President's budget.

As this committee considers the future of the Commission, we ask that you bear in mind that the Commission's statutory factfinding authority and powers, its bipartisan makeup, and its independence to carry out its mission freely are critical to making the Commission strong and effective. Our independent status means that we have no vested interests in particular civil rights policies or enforcement programs, nor are our recommendations and policy decisions subject to

Administration approval before issuance. And our bipartisan makeup ensures that key issues are examined from a range of perspectives. Although our task would be easier if we were all of the same mind and experience, I believe we all agree that the effort of forging consensus from diverse perspectives enhances both the credibility and effectiveness of the Commission's work.

Unlike private organizations, the Commission possesses special investigative powers, including the power to issue subpoenas and conduct hearings. Additionally, Federal agencies are required, by law, to cooperate with the Commission's factfinding activities. The Commission does not advocate, litigate, mediate, or enforce laws. Our agency has just one central mission: to investigate the status of civil rights and civil rights enforcement and to inform the President, the Congress, and the public of our findings and recommendations. In sum, these factors give the Commission a unique and important position to oversee and shape civil rights policies and law enforcement, irrespective of which political party predominates in the Presidency or Congress.

A review of the Commission's recent accomplishments and plans for FY 1998 reveals a program that addresses some of the most pressing and controversial civil rights issues of the day.

Plans for FY 1998

The Commission's programmatic agenda for FY 1998 continues to emphasize three principal areas: Federal civil rights enforcement, issues of national civil rights importance, and civil rights developments in the our States, cities, suburbs, and rural communities.

Among its top priorities, the Commission remains strongly committed to its statutory responsibility for monitoring and evaluating Federal civil rights enforcement efforts. In the coming year we will undertake a major review of the enforcement of the Americans with Disabilities Act of 1990 (ADA), specifically, titles I and II of the Act. This study will bring to bear the Commission's full factfinding capabilities, including a formal hearing, and should provide the most comprehensive evaluation of ADA to date when a report is issued at the end of FY 1998.

A second high priority for FY 1998 is a project addressing the critical and controversial issue of public schools and religious freedom. Through a series of hearings, this project is intended: (1) to assess school districts' compliance with the Equal Access Act, 20 U.S.C. ' 4071, and Supreme Court decisions governing equal access to school facilities by religious groups; (2) to determine whether schools are maintaining the delicate balance between the legally mandated separation between church and state, which requires a nonsectarian, neutral position and the avoidance of entanglements in regard to teaching religious doctrine or practice, while complying with equal access law; (3) to determine whether all religious groups are accorded protection under existing laws; and (4) to identify specific religious practices and beliefs that may be subject to discrimination or denial of equal protection. We expect to complete factfinding for this study in FY 1998 and to issue a report with our findings and recommendations in FY 1999.

In addition to these two new projects for FY 1998, the Commission will commit sufficient resources to complete two important projects that will be carried over from FY 1997.

A multiyear project that has sought, through a series of hearings, to illuminate the causes and consequences of the racial and ethnic tensions that plague many American communities. We will issue the remaining hearing reports and a final volume summarizing the Commission's findings and recommendations.

A study of the crisis facing young African American males in the inner cities. Beginning in FY 1998, the Commission will conduct a consultation and a public factfinding hearing, to examine the sources and possible solutions to this crisis, as manifest in disproportionately high rates of unemployment, underemployment, incarceration, and drug addiction. Additional research will include studying census data, State agency population data, local social service data, local

prosecutor and district attorney data, and a detailed analysis of the policies of the U.S. attorney's offices serving five selected cities.
Other projects planned for FY 1998 under the Commission's $11 million appropriation request include the following: Federal affirmative action programs and policies relating to employment, contracting and licensing, and education, and the Federal workforce will be examined. Developing issues concerning affirmative action by State and local governments may be addressed. A hearing will be held in FY 1999 to collect factual information in these topical areas followed by the release of a report with the Commission's findings and recommendations.

The role of the Federal Government in encouraging citizenship will be examined to determine what the government might reasonably be expected to do to foster naturalization and whether existing impediments to naturalization can be ameliorated. The project will examine the effect and efficacy of recently enacted reforms as well as various proposals to improve accessibility to citizenship. We will also consider evidence on the issue of whether naturalization procedures are implemented differently for different national groups. A report on this project is planned for FY 1999.
In addition to the above-mentioned projects, the Commission is currently laying the groundwork for a major project in FY 1998 whose purpose is to develop appropriate indicators of and methodologies for measuring discrimination in America. This ambitious, yet essential, undertaking is expected ultimately to provide a stronger factual basis for conducting the national dialogue on civil rights and for developing Federal, State, and local civil rights policies. Improved measures of discrimination would also provide a valuable tool for Federal agencies to determine how and to what extent they are fulfilling their civil rights enforcement responsibilities. Given the complex and controversial nature of issues relating to defining and measuring discrimination, the Commission is taking special care in implementing this project. Decisions on whether and how to proceed with the project are pending the completion of related preliminary work by the Commission staff.
The Commission will maintain an active program for disseminating information and educating the public. Of particular note, we plan to build upon our success in developing public service announcements and will continue the publication of the Commission's magazine, Civil Rights Journal. We also expect to expand and further automate the operations of the Commission's National Clearinghouse Library, which, as the largest collection of civil rights information in the country, serves as a valuable resource for scholars, public and private sector organizations, interested citizens, as well as Commission staff members.
The Commission's plan for FY 1998 includes expanding the staff of our six regional offices. These small offices of 3-6 employees support the vital work of the 51 State Advisory Committees (SAC) which serve as the "eyes and ears" of the Commission in communities across America. The more than 600 committee members who have volunteered to participate in various factfinding and outreach activities of the SACs, through their collective participation, bring to bear an impressive range of expertise and knowledge on civil rights, local and national affairs, and related issues. The SACs' potential as a resource for guiding the Nation's civil rights policies can be more fully realized by expanding the regional staffs' capacity to bring the committees' work to light.
In FY 1998, the Commission expects to receive approximately 10,000 written and telephonic complaints from individuals alleging civil rights violations. These complaints originate in all 50 States and the territories, and relate to a wide spectrum of issues including civil rights concerns, child abuse, police brutality, and denial of social security. Each complaint must be reviewed and

fowarded to the appropriate agency for action. In FY 1998, resources will be used to enhance the tracking of complaints referred by the Commission to other Federal agencies.

Accomplishments

Over the years, the Commission's reports, hearings, and other products have had a major influence on civil rights policies and enforcement efforts. In the past year, we have extended this fine record with the completion of several major reports and two hearings.

Under the Equal Educational Opportunity Project, the Commission has been examining Federal programs and civil rights enforcement relating to four key areas of education: accessibility of educational services to students with disabilities, educational opportunities of students with limited English proficiency, accessibility of public school math and science programs to girls, and ability grouping and tracking of minority youth. Planned as a series of reports, thus far, the project has yielded two reports, Equal Educational Opportunity Project Series--Volume, published, December 1996, and Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, which is due to be published in the near future. In addition, two draft reports currently are being revised for Commissioner review and approval.

In the past year, the Commission completed the last in a series of hearings for the multiyear project on Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination: In September 1996, we held a hearing in Los Angeles to look into law enforcement and police-community relations issues in the Los Angeles area. And in March 1997, we held the final hearing in Greenville, Mississippi, to consider issues relating to economic and educational opportunity and voting rights in the Mississippi Delta region. Hearings previously have been held in Washington, DC, Chicago, New York City, Los Angeles, and Miami.

Currently being prepared for release is a report, entitled Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination--Miami Hearing, which focuses on immigration-related issues in south Florida. Other reports are being prepared on hearings in Los Angeles, New York City, and Greenville, Mississippi. We expect the Racial and Ethnic Tensions reports will provide elected leaders, policymakers, community organizations, and the general public with valuable insight into why race relations remain seriously strained in many American communities and ways of solving the underlying causes.

Commission reports may take years to have an impact on civil rights, particularly when many Federal civil rights enforcement agencies are facing tighter budgets. Nevertheless, a recent report, Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs (June 1996), illustrates well the potential value of Commission reports.

The Title VI report evaluated whether the Federal law prohibiting discrimination on the basis of race and national origin in federally assisted programs was being adequately enforced. Simply stated, we found that it was not.

Since its release a year ago, the Title VI report has been received very well by Federal and State agencies and the general public. For example, based on the Commission's findings and recommendations, several Federal agencies have taken action to improve their Title VI implementation, compliance, and enforcement activities. As just two specific cases:

The Department of Justice has reorganized its Civil Rights Division to provide more resources to its Title VI enforcement activities and to create a Coordination and Review Section devoted entirely to the coordination of Title VI and Title IX enforcement. In addition, based on the Commission's inquiries, the Civil Rights Division has resumed publishing the Civil Rights Forum and has developed a comprehensive training module on Title VI. Moreover, the Department has improved its public outreach and education activities by installing a telephone hotline, producing a public

service announcement, and distributing a pamphlet explaining to the general public how to exercise their rights under Title VI.

The Department of Agriculture also has reorganized to improve its external civil rights obligations. In February of 1997, the Department issued a civil rights action plan that relies heavily on the Commission's report as a road map for improving its civil rights program.

In the area of education and outreach, we have resumed publication of the Commission's magazine, entitled Civil Rights Journal. The Commission has also been successful in developing public service announcements (PSAs) which are intended to combat discrimination and intolerance. Our first radio PSA campaign, "Discrimination: Just Out of Tune with America," was recorded by Mary Chapin Carpenter and aired by radio in 1996. The cost to the Commission for developing and distributing this message was relatively small and, based on a very high station response rate, the air time has been estimated to be worth at least $1,000,000. The success of this PSA is also indicated by a marked increase in the number of civil rights complaints and inquiries the Commission received each month after the PSA aired: many people simply do not know where to turn when they think their rights have been violated or that the Federal agency responsible for protecting them is being unresponsive. The Commission's PSA program, as part of a larger education and outreach effort, informs people about the law and assists people who seek help to protect their rights.

The Commission has begun distributing its second PSA, "Teach our Children," about tolerance and valuing others despite our differences, recorded by both Phyllicia Rashad and Eriq LaSalle.

The Commission recently updated and reissued Getting Uncle Sam to Enforce Your Civil Rights. This small, 115-page guide is packed with useful information for individuals who believe their civil rights have been violated and want to know the "who, what, when, and where" in finding help to protect those rights. Given the complexity of civil rights law and the diffuse nature of Federal civil rights enforcement, as well as State and local jurisdictions, this little booklet, like its predecessor, published in 1980, will prove invaluable to a great many people who need assistance.

The State Advisory Committees conduct factfinding meetings and prepare reports on a wide range of topics, such as affirmative action, enforcement of Title Vl, policecommunity relations, Federal immigration law enforcement, and hate crime. While reports often require considerable time and effort to complete, the SACs have also demonstrated an ability to react quickly in a crisis. For example, responding to the rash of arson attacks on predominantly African American churches, the SACs in Alabama, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee held community forums to examine the response of Federal, State, and local law enforcement to the attacks and race relations in the affected areas. The Commission collected the information in executive summaries and published transcripts of each forum which were sent to the various law enforcement agencies, the Community Relations Service (DO J), State and local government agencies, private organizations, and other interested parties. Based on this record, SAC members have met with the Governors of Louisiana, South Carolina, Tennessee, and Mississippi to press for strong action to curb the violent attacks and to ease racial tensions. The SACs in Alabama, Mississippi, and Louisiana recently held site visits to assess local conditions, one year later. The Chairperson and other Commissioners have participated in these SAC activities.

Management Issues

Mr. Chairman, in the past year, you requested and have received two reports on the Commission's personnel operations and management, one by the Office of Personnel Management (OPM) and the other by the General Accounting Office (GAO). In response to the OPM report, we have taken a

number of steps to correct the deficiencies in our personnel function, and have received a very positive response from OPM indicating that our actions are on the right track.
The GAO report (GAO/HEHS-97-125), issued just this month, was critical of the Commission's program management, budgeting, and accounting procedures, and makes three recommendations: that the Commission update agency regulations on the organizational structure, procedures, and program processes of the Commission not updated since 1985; update internal management guidance not updated since 1982, and establish a management information system for planning and tracking projects. We will implement each of these recommended changes.
Commissioners agree that a critical element in successfully addressing these areas is the day-to-day management of the Staff Director, both in directing the staff and in supporting the Commissioners' role of planning and policymaking. Regulations and intemal guidelines can be updated, and management information systems developed, but without an effective Staff Director, the changes we expect in processes, accountability, and performance cannot be fully realized. I want to assure the members of this Subcommittee that the Commissioners are committed to making any necessary changes to improve the agency's performance.
Mr. Chairman, let me conclude by saying that we look forward to working with the Subcommittee on reauthorizing the Commission. I will be pleased to answer questions you might have concerning the work of the Commission and its reauthorization.
END

JULY 17, 1997, THURSDAY

**SECTION:** IN THE NEWS

**LENGTH:** 5041 words

**HEADLINE:** PREPARED TESTIMONY OF
CORNELIA M. BLANCHETTE
ASSOCIATE DIRECTOR, EDUCATION AND EMPLOYMENT ISSUES, HEALTH, EDUCATION
AND HUMAN SERVICES DIVISION, U.S. GENERAL ACCOUNTING OFFICE
BEFORE THE HOUSE JUDICIARY COMMITTEE
THE CONSTITUTION SUBCOMMITTEE
U.S. COMMISSION ON CIVIL RIGHTS

**BODY:**
Mr. Chairman and Members of the Subcommittee:
We are pleased to be here today to discuss the management of the U.S. Commission on Civil Rights.
Racially motivated church burnings across the country; racial and civil unrest in major metropolitan cities such as St. Petersburg, Florida; and the national debate over the continuing need for federal affirmative action programs and policies are only some of the issues the U.S.Commission on Civil Rights is working on today. Established by the Civil Rights Act of 1957, the Commission had a budget of $8.75 million, 8 part-time commissioners, and a staff of 91 in fiscal year 1996. The commissioners have two principal responsibilities: (1) investigating claims of voting rights violations and (2) studying and disseminating information, often collected through specific projects,

on the impact of federal civil rights laws and policies. Last year, amid complaints of mismanagement and in preparation for the agency's reauthorization, your Subcommittee began to look into how the Commission carries out its responsibilities and manages its resources. You asked us to assist you in this effort by providing information on the Commission's management of projects during fiscal years 1993 through 1996. The Commission identified 22 projects in this time frame-5 were completed, 7 were ongoing, and 10 were deferred. Commission projects entail collecting and analyzing information on civil rights issues, such as racial and ethnic tensions in American cities and fair housing, in order to appraise applicable federal laws and regulations. While our review initially addressed the Commission's management of its projects, problems we encountered during our work caused us to be concerned with general management at the Commission as well.

My comments today will summarize the findings discussed in our recent report on the management of the Commission, focusing first on general management issues and then on the management of the Commission's projects.1 Our report is based on reviews of Commission records; interviews with all of the current commissioners, the staff director at the time of our review, and other responsible Commission officials; and our observations from Commission meetings we attended.

In summary, we found broad management problems at the Commission on Civil Rights. The Commission appears to be an agency in disarray, with limited awareness of how its resources are used. For example, the Commission could not provide key cost information for individual aspects of its operations, such as its regional offices; its complaints referral process; its clearinghouse; public service announcements; and, in one case, a project. Furthermore, significant agency records documenting Commission decision-making were reported lost, misplaced, or nonexistent. The Commission has not established accountability for resources and does not maintain appropriate documentation of agency operations. Lack of these basic, well- established management controls makes the Commission vulnerable to resource losses due to waste or abuse.

Commission records indicate that projects accounted for only about 10 percent of the agency's appropriations during fiscal years 1993 through 1996 despite the broad array of civil rights issues addressed. Furthermore, our work showed that management of the 12 Commission projects completed or ongoing during this 4-year period appeared weak or nonexistent. The Commission's guidance for carrying out projects is outdated, and the practice described to us for conducting projectsincluding specifying anticipated costs, completion dates, and staffing-was largely ignored. For instance, 7 of the 12 projects had no specific proposals showing their estimated time flames, costs, staffing, or completion dates. Specific time frames were not set for most projects, and when they were, project completion dates exceeded the estimates by at least 2 years. Overall, projects took a long time to complete, generally 4 years or more. Some projects took so long that Commission staff proposed holding additional hearings to obtain more current information. Poor project implementation likely contributed to the lengthy time flames. Moreover, we found that Commission management did not systematically monitor projects to ensure quality and timeliness. Finally, Commission project reports are disseminated to the public through three different offices, none of which appears to coordinate with the others to prevent duplication.

We made several recommendations in our report about improving management at the Commission. Even though the commissioners did not all agree with our findings, they did agree to implement the recommendations.

BACKGROUND

The Commission on Civil Rights was created to protect the civil rights of people within the United States. It is an independent, bipartisan, fact-finding agency directed by eight part-time commissioners. Four commissioners are appointed by the president, two by the president pro

tempore of the Senate, and two by the speaker of the House of Representatives. No more than four commissioners can be of the same political party, and they serve 6-year terms. The Commission accomplishes its mission by (1) investigating charges of citizens being deprived of voting rights because of color, race, religion, sex, age, disability, or national origin; (2) collecting and studying information concerning legal developments on voting rights; (3) monitoring the enforcement of federal laws and policies from a civil rights perspective; (4) serving as a national clearinghouse for information; and (5) preparing public service announcements and advertising campaigns on civil rights issues. The Commission may hold hearings and, within specific guidelines, issue subpoenas to obtain certain records and have witnesses appear at hearings. It also maintains state advisory committees and consults with representatives of federal, state, and local governments and private organizations to advance its fact-finding work.

The Commission is required to issue reports on the findings of its investigations to the Congress and the president, and to recommend legislative remedies. The Commission also must submit to the president and the Congress at least once annually a report that discusses the Commission's monitoring of federal civil rights enforcement in the United States. Because it lacks enforcement powers that would enable it to apply remedies in individual cases, the Commission refers specific complaints it receives to the appropriate federal, state, or local government agency for action.2

Projects conducted by the Commission to study various civil rights issues are largely the responsibility of its Office of the General Counsel (OGC) with a staff of 15 and the Office of Civil Rights Evaluation (OCRE) with a staff of 12 in fiscal year 1996. The largest component of the Commission is the Regional Programs Coordination Unit with 2 staff members in the Washington, D.C., office and 25 staff members in six regional offices. The regional offices direct the Commission's work, which is carried out through 51 advisory committees-one in each state and the District of Columbiacomposed of citizens familiar with local and state civil rights issues.

## COMMISSION'S MANAGEMENT REFLECTS AN AGENCY IN DISARRAY

The Commission's management of operations at the time of our review showed a lack of control and coordination. The Commission had not updated its depiction of its organizational structure as required under the Freedom of Information Act (FOIA) nor its administrative guidance to reflect a major reorganization that occurred in 1986. Obsolete documentation of the agency's operating structure and administrative guidance leaves the public and Commission employees unsure of the agency's procedures and processes for carrying out its mission. Moreover, Commission officials reported key records as lost, misplaced, or nonexistent, which leaves insufficient data to accurately portray Commission operations. Agency spending data are centralized, and Commission officials could not provide costs for individual offices or functions. We also found that the Commission has never requested audits of its operations, and information regarding Commission audits in its fiscal year 1996 report on internal controls was misleading.

### Agency Policies and Procedures Unclear

The Commission has no documented organizational structure available to the public that reflects current information on procedures and program processes of the Commission. The Freedom of Information Act requires federal agencies to publish and keep up to date theft organizational structure and to make available for public inspection and copying the agencies' orders, policies, and administrative staff manuals and instructions. The Code of Federal Regulations, the principal document for publishing the general and permanent rules of federal agencies, shows the

Commission's organizational structure as of May 1985,:3 but the Commission's current organizational structure is substantially different because of a major reorganization in 1986.

In addition, the Commission's Administrative Manual was issued in May 1975, but the Commission has paid little attention over the last 10 years to maintaining and updating it to accurately reflect agency operations. The purpose of the manual is to translate administrative policy derived from the various legislative and regulatory policies affecting the day-to-day operations of the Commission into procedures that the Commission staff can rely on for guidance in carrying out the agency's mission. The Commission's major reorgamzation in the mid- 1980s, coupled with a high turnover of staff in key positions, makes up-to-date operating guidance especially important for maintaining continuity and performing work efficiently and effectively. The directors of the two offices responsible for conducting projects, however-who had been employed at the Commission for 5 and 2-1/2 years, respectively-had only the 1982 version of the manual Administrative Manual to rely on for official procedures for conducting projects.

Commission officials told us that, although it was outdated, the guidance in the manual still reflects the basic Commission policy for conducting projects. We found, though, that projects did not follow all steps outlined in this guidance, and could not, for some steps, because the offices no longer existed.

Commission officials told us that they were in the process of updating the Commission's Administrative Manual and had updated 8 of 73 administrative instructions; but the administrative instruction for implementing projects is not one of the 8. The Staff Director4 told us that she had recently convened a task force, made up of the two office directors responsible for conducting projects and the Special Assistant to the Staff Director, to revamp the administrative instruction for projects. As of June 16, 1997, Commission officials said that the task force had met at least three times over the past several months and that the Commission expected to have a final version of the administrative instruction to propose to the new staff director when appointed.

Key Commission Records Missing

The Commission reported that key records-that either were the basis for or documented decisions about Commission operations and management of projectswere lost, misplaced, or nonexistent. And minutes of certain Commission meetings were reported to be lost. According to officials, minutes of Commission meetings discussing the initiation of 7 of the 22 projects were lost or misplaced. Additionally, the files for these seven projects were misplaced, misfiled, or not available for review.5 Other key records outlining critical information about projects did not exist, such as project proposals, or were not available, such as the actual start dates for projects. The Commission also did not have a record showing the total cost of its project on funding federal civil rights enforcement.

Spending Data Not Maintained by Office or Function

Commission officials told us that they maintain a central budget and could not provide the amount or percentage of the budget used by individual offices or functions, such as complaint referrals or clearinghouse activities. The only function Commission officials gave us separate financial information on was the projects' costs. But even for project costs, records were poorly maintained and it is unclear whether they reflect the true costs for projects. For example, the Commission approved one project's report for publishing on September 9, 1994, and the report shows an issuance date of September 1994. Yet financial information provided to us showed costs incurred through fiscal year 1996 for this project. A November 1, 1995, letter from the Commission to the House Constitution Subcommittee showed actual costs for the project of $261,529, but data Commission

officials provided us showed total project costs of $531,798. At the time of our audit work, the Commission was not able to reconcile these differences.6

Commission's Management Controls Are Weak

The Commission's management controls over its operations are weak and do not ensure that the Commission can meet its statutory responsibilities7 or program objectives. Federal agencies are required under the Federal Manager's Financial Integrity Act to report annually on internal controls to the president and the Congress, but the Commission did not do such a report for fiscal year 1995. Furthermore, the Commission's internal controls report for fiscal year 1996 appears to misrepresent information concerning audits of the Commission. The report claims that several administrative activities are randomly audited by the U.S. Department of Agriculture's Inspector General, when in fact no such audits were done. The only direct connection between the Commission and the Department of Agriculture is that the Commission's financial transactions are handled through Agriculture's National Finance Center. Vendors submit invoices directly to the National Finance Center for payment, and the Commission does not verify the accuracy of the invoices submitted. The Agriculture Inspector General is responsible for auditing the automated systems of Agriculture's National Finance Center. But the Inspector General's office told us that the Commission has never requested any audits of its transactions. We did not find that any other audits of Commission expenditures had' been performed?

Recent reviews of the Commission's operations by the Office of Personnel Management (OPM) and a civil rights advocacy group have been critical of Commission management. OPM reviewed the Commission's personnel practices and concluded in a 1996 report that the Commission is "badly in need of managerial attention."9 The OPM report has resulted in proposed corrective actions that, if fully implemented, should improve the situation. A 1995 report by the Citizens' Commission on Civil Rights reported that the Commission's performance has been "disappointing."100 The report noted that projects take so long to complete that changing conditions may render them out of date by the time the project is completed, reducing the effectiveness of the Commission's work.

COMMISSION PROJECTS ARE POORLY MANAGED AND TAKE YEARS TO COMPLETE

Although Commission projects address a broad array of civil rights issues, including racial and ethnic tensions in American communities; the enforcement of fair housing, fair employment, and equal education opportunity laws; and naturalization and citizenship issues, its project spending accounts for a small percentage of the Commission's budget. Furthermore, the Commission's efforts to manage these projects fall short in areas such as following project management guidance, meeting projected time frames for completing projects, and systematic monitoring of projects.

During fiscal years 1993 through 1996, the Commission completed 5 projects, deferred 10 others, and worked on another 7 that were Still ongoing at the end of fiscal year 1996.

Project Spending Accounts for Small Percentage of Commission Budget

Although the Commission appears to spend about 10 percent of its resources annually on projects, we were unable to verify project spending because of the Commission's poor record-keeping. According to Commission records, costs incurred for ongoing and completed projects during fiscal years 1993 through 1996 ranged from about $33,00011 for a completed project on funding for federal civil rights enforcement to about $764,000 for a project on racial and ethnic tensions in Los Angeles that had been ongoing throughout the 4-year period.

Project Management Guidance Often Ignored

The Commission's Administrative Manual, which governs the process for conducting projects, has not been updated since 1982 and does not accurately reflect the current practices as described to us.

Furthermore, our review of the projects showed that the process described was often not followed. According to Commission officials, the process that should be used to develop an idea into a project and ultimately a report includes five stages: (1) initiating an idea as a concept, (2) selecting concepts to develop into proposals for projects, (3) conducting project research, (4) approving final publication of a report, and (5) publishing and disseminating the report.

Project documentation showed that this process was frequently ignored; less than half of the projects during the period we studied followed these procedures. Of the 12 completed and ongoing projects, only 4 had both concept papers and detailed proposals specifying the focus of the project, time frame, budget, and staff level. None of the racial and ethnic tensions projects included proposals indicating the time frame for completion, proposed budget, or anticipated staff level. These six projects have absorbed years of staff time and accounted for more than 50 percent of the Commission's total project spending, yet only two have been completed. Although concept papers are required for deferred projects, only 3 of the 10 deferred projects had concept papers.

Projects Take Years to Complete The Commission has no overall standard for assessing a project's timeliness or for estimating the time needed for specific projects. While an estimate of the time needed to conduct projects is required in proposals, very few projects had estimated time frames for completing projects. For the projects that did specify time frames, the actual time a project took to complete was 2 to 3 years beyond its planned duration. Only two of the five completed projects had anticipated start and finish dates, but both overran their time frames. Both had anticipated time flames of 1 year, but one project took 3 years (Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs. issued June 1996), and the other took 4 years (The Fair Housing Amendments Act of 1988: The Enforcement Report, issued September 1994). The Commission attributed delays in meeting estimated time frames to staff turnover, limited staff resources, and the need to update factual information.

Although the duration of the projects cannot generally be compared with an expected or approved length, we found that their actual time frames spanned several years. During the period of our review, projects took an average of 4 years to complete from the time they were approved by the commissioners.12 Four of the five completed projects had data available on time frames-three of the projects took 4 or more years to complete, and one was completed in about 2-1/2 years. For one project, the Commission held a hearing in May 1992 and in the ensuing 3 years incurred additional costs of about $50,000. In 1995, it issued the hearing transcript, accompanied by a summary of its contents without any further analysis, as a final product.13 The Commission's staff director reported in a November 1995 letter to the House Judiciary Committee's Subcommittee on the Constitution that the Commission originally scheduled publication of the hearing transcript for fiscal year 1993 but "subsequently, the decision was made to publish an executive summary in addition to the transcript, which delayed publication of the document." Ongoing projects appeared likely to overrun estimated time frames as well: Six of the seven ongoing projects were approved nearly 6 years ago.

Problems with the quality of the planning and implementation of certain projects have apparently contributed to the lengthy time frames. For example, the Commission's General Counsel requested additional hearings on three projects because of poor planning for the initial hearings and the resulting inadequate data gathering. For the racial and ethnic tensions projects for New York, Chicago, and Los Angeles, the General Counsel determined that the information gathered at previous hearings was insufficient, outdated, or too weak to support a quality report. The New York project had insufficient testimony and documentation in eight different areas. The Chicago project was criticized by city officials as presenting an unbalanced picture, including unsubstantiated testimony, mischaracterized information, inadequate or nonexistent analyses, and missing certain

recent city initiatives. The Los Angeles report contained information that the Commission's General Counsel viewed as outdated and therefore required further investigation for the Commission's report to be current. Projects Not Systematically Monitored

The Commission does not systematically monitor projects to ensure quality and timeliness of project results and to help set priorities. The only formal mechanism in place to inform the commissioners about the status of projects is used at the discretion of the staff director, who may report status orally or in a monthly report to the commissioners. 14 We found that the commissioners received only limited updates on some projects in the staff director's monthly report. The staff director did receive periodic updates about the progress of projects being conducted by OGRE. However, because of frequent staff turnover and misfiled or lost records, we could not determine whether the staff in the General Counsel's office similarly reformed the staff director about project progress.

Commissioners do not receive information routinely on the costs of projects or personnel working on the projects. After a vote to approve a project, commissioners are not informed of (1) which projects the staff director decides to start, (2) when projects are actually started, (3) cost adjustments for projects, (4) time frame changes, or (5) personnel changes, all of which can affect the timeliness and quality of projects. All of the commissioners told us that they are not involved in assigning projects or specific tasks to the staff and that this is strictly a responsibility of the staff director. However, most commissioners expressed a desire to receive routine reports on the status of individual projects, specifically, costs and time frames for completion, so they would know when to expect draft reports. In fact, most of the commissioners told us that they frequently have no knowledge of the status of a particular project from the time they approve it until a draft report is given to them for review. Some commissioners said that communication is a big problem at the Commission and that improvement in this area up and down staff levels could help resolve the problem.'

DISSEMINATION OF PROJECT REPORTS

The Commission uses three different offices to disseminate project reports, but a lack of coordination among these offices raises the potential for duplication. The responsible project office; the Congressional Affairs Unit; and the Office of Management, Administrative Services and Clearinghouse Division, all maintain mailing lists but do not coordinate to prevent duplicative mailings.

CONCLUSIONS AND RECOMMENDATIONS

Our overall assessment of the Commission is that its operations lack order, control, and coordination. Management is unaware of how federal funds appropriated to carry out its mission are being used, it lacks control over key functions, and it has not requested independent audits of Commission operations. These weaknesses make the Commission vulnerable to misuse of its resources. The lack of attention to basic requirements applying to all federal agencies, such as up-to-date descriptions of operations and internal guidance for employees, reflects poorly on the overall management of the Commission.

Projects embody a key component of the Commission's operations, yet the management of projects is haphazard or nonexistent.

No overall standard exists for assessing the timeliness of projects or for estimating how long projects should take. And the lack of project documentation, systematic monitoring to detect delays and review priorities, and coordination among offices that disseminate reports seriously hamper the Commission's ability to produce, issue, and disseminate timely reports. Results from independent

reviews of the Commission's operations, such as the Citizens' Commission on Civil Rights and OPM, substantiate our assessment of the Commission's management and the need for improvements.

In our report, we recommended that the Commission develop and document policies and procedures that (1) assign responsibility for management functions to the staff director and other Commission officials and (2) provide mechanisms for holding them accountable for properly managing the Commission's day-to-day operations. We specified some actions that such an effort should include.

In the Commission's comments on our draft report, haft of the commissioners agreed with our assessment, while the other haft challenged the report. All of the commissioners agreed, however, to implement the recommendations. In fact, the Commission Chairperson and the Office of the Staff Director reported that some efforts already were under way to implement the recommendations. We hope that these efforts will significantly improve management of the Commission.

Mr. Chairman, this concludes my prepared remarks. We would be happy to answer any questions you or Members of the Subcommittee may have. 1U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls (GAO/HEHS-97-125, July 8, 1997).

2Several agencies have enforcement authority for civil rights issues. For example, the Equal Employment Opportunity Commission is charged with enforcing specific federal employment antidiscrimination statutes, such as title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. Also, the Assistant Attorney General for Civil Rights in the Department of Justice is the enforcement authority for civil rights issues for the nation.

3U.S. Commission on Civil Rights mission and functions: 45 C.F.R., part VII.

4The staff director at the time of our review resigned effective December 31, 1996. A new staff director joined the Commission on June 30, 1997.

5These projects included six on racial and ethnic tensions in American communities that were completed or ongoing and one completed project on funding federal civil rights enforcement.

6The project evaluated the enforcement of the Fair Housing Amendments Act of 1988. In responding to a draft of our report, the Office of the Staff Director said that the project produced two reports and data provided to the Congress reflected fiscal year 1994 cost while the GAO request represented all costs on the project and adding the costs associated with the two reports reconciles the difference. Records provided us during the audit do not support these comments.

7The Subcommittee on the Constitution, House Committee on the Judiciary, reported that for fiscal year 1995 the Commission did not meet its statutory requirement to submit to the Congress at least one report that monitors federal civil rights enforcement. (104th Congress, House Report 104-846, Sept. 1996).

8The Commission is not required by statute to have an Inspector General, and its operations have not been audited by an outside accounting firm.

9OPM, Office of Merit Systems Oversight and Effectiveness, Report of an Oversight Review: U.S. Commission on Civil Rights-Washington, D.C. (Washington, D.C.: OPM, Nov. 1996).

10Citizens' Commission on Civil Rights, New Challenges: The Civil Rights Record of the Clinton Administration Mid-term: Interim Report on Performance of U.S. Commission on Civil Rights During the Clinton Administration (Washington, D.C.: Citizens' Commission on Civil Rights, 1995). The Citizens' Commission on Civil Rights is a private bipartisan group of officials who formerly served in federal government positions with responsibility for equal opportunity. The Citizens Commission was established in 1982 to monitor the federal government's civil rights policies and practices and seek ways to accelerate progress in the area of civil rights.

11 The total cost of this project is not known because Commission officials did not, as they had for other projects, account for staff salaries spent to conduct the project.
12Because the Commission did not have information on actual start dates, we determined our cycle time calculations using the project approval date as the start date and the report issuance date as the end date.
13Commission on Civil Rights, Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination - A National Perspective, executive summary and transcript of hearing held in Washington, D.C. (Washington, D.C.: U.S. Commission on Civil Rights, May 21-22, 1992). Commission data provided us showed that the Commission approved the transcript and executive summary for publication as of March 1995, but the actual document is dated May 1992.
14 While the Commission holds planning meetings to discuss future projects, these meetings are held annually and therefore do not serve to routinely inform the commissioners about the status of projects.
END

## D. H.R. 3117: An Act to Reauthorize the U.S. Commission on Civil Rights

LEXSEE 105 H.R. 3117

FULL TEXT OF BILLS

105TH CONGRESS; 2ND SESSION
IN THE SENATE OF THE UNITED STATES
AS REFERRED IN THE SENATE

H. R. 3117

*1998 H.R. 3117; 105 H.R. 3117*

Retrieve Bill Tracking Report

SYNOPSIS:
AN ACT To reauthorize the United States Commission on Civil Rights, and for other purposes.

DATE OF INTRODUCTION: JANUARY 28, 1998

DATE OF VERSION: MARCH 20, 1998 -- VERSION: 6

SPONSOR(S):
Sponsor not included in this printed version.

TEXT:
*Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled*,
SECTION 1. SHORT TITLE.
This Act may be cited as the "Civil Rights Commission Act of 1998".
SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.
(a) EXTENSION.-SECTION 6 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 (42 U.S.C. 1975D) IS AMENDED BY STRIKING "1996" AND INSERTING "2001".
(B) AUTHORIZATION.-THE FIRST SENTENCE OF SECTION 5 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975C)* IS AMENDED TO READ "THERE ARE

AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY TO CARRY OUT
THIS ACT FOR FISCAL YEARS THROUGH FISCAL YEAR 2001.".
SEC. 3. STAFF DIRECTOR.
Section 4(a)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)(1)) is amended-
(1) by striking "There shall" and inserting the following:
"(A) IN GENERAL.-THERE SHALL";
(2) BY STRIKING "(A)" AND INSERTING THE FOLLOWING:
"(I)";
(3) BY STRIKING "(B)" AND INSERTING THE FOLLOWING:
"(II)"; AND
(4) BY ADDING AT THE END THE FOLLOWING:
"(B) TERM OF OFFICE.-THE TERM OF OFFICE OF THE STAFF DIRECTOR SHALL BE 4 YEARS.
"(C) REVIEW AND RETENTION.-THE COMMISSION SHALL ANNUALLY REVIEW THE PERFORMANCE OF THE STAFF DIRECTOR.".
SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY, SUNSHINE, AND ADVISORY COMMITTEE ACTS.
Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is amended by adding at the end the following:
"(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.-THE COMMISSION SHALL BE CONSIDERED TO BE AN AGENCY, AS DEFINED IN SECTION 551(1) OF TITLE 5, UNITED STATES CODE, FOR THE PURPOSES OF SECTIONS 552, 552A, AND 552B OF TITLE 5, UNITED STATES CODE, AND FOR THE PURPOSES OF THE FEDERAL ADVISORY
COMMITTEE ACT.".
SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.
Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is further amended by adding at the end the following:
"(g) INDEPENDENT AUDIT.-BEGINNING WITH THE FISCAL YEAR ENDING SEPTEMBER
30, 1998, AND EACH YEAR THEREAFTER, THE COMMISSION SHALL PREPARE AN ANNUAL FINANCIAL STATEMENT IN ACCORDANCE WITH SECTION 3515 OF TITLE 31, UNITED STATES CODE, AND SHALL HAVE THE STATEMENT AUDITED BY AN INDEPENDENT EXTERNAL AUDITOR IN ACCORDANCE WITH SECTION 3521 OF SUCH TITLE.".
SEC. 6. TERMS OF MEMBERS.
(a) IN GENERAL.-SECTION 2(C) OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975*(C)) IS AMENDED BY STRIKING "6 YEARS" AND INSERTING "5 YEARS".
(B) APPLICABILITY.-THE AMENDMENT MADE BY THIS SECTION SHALL APPLY ONLY
WITH RESPECT TO TERMS OF OFFICE COMMENCING AFTER THE DATE OF THE ENACTMENT OF THIS ACT.
SEC. 7. REPORTS.

Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)(1)) is amended by striking "at least one report annually" and inserting "a report on or before September 30 of each year".

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

(a) IMPLEMENTATION OF GAO RECOMMENDATIONS.-THE COMMISSION SHALL, NOT LATER THAN JUNE 30, 1998, IMPLEMENT THE UNITED STATES GENERAL ACCOUNTING OFFICE RECOMMENDATIONS REGARDING REVISION OF THE COMMISSION'S ADMINISTRATIVE INSTRUCTIONS AND STRUCTURAL REGULATIONS TO REFLECT THE CURRENT AGENCY STRUCTURE, AND ESTABLISH A MANAGEMENT INFORMATION SYSTEM TO ENHANCE THE OVERSIGHT AND PROJECT EFFICIENCY OF THE COMMISSION.

(B) ADA ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL COMPLETE AND SUBMIT A REPORT REGARDING THE ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

(C) RELIGIOUS FREEDOM IN PUBLIC SCHOOLS.-

(1) REPORT REQUIRED.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL PREPARE, AND SUBMIT UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983, A REPORT EVALUATING THE POLICIES AND PRACTICES OF PUBLIC SCHOOLS TO DETERMINE WHETHER LAWS ARE BEING EFFECTIVELY ENFORCED TO PREVENT DISCRIMINATION OR THE DENIAL OF EQUAL PROTECTION OF THE LAW BASED ON RELIGION, AND WHETHER SUCH LAWS NEED TO BE CHANGED IN ORDER TO PROTECT MORE FULLY THE CONSTITUTIONAL AND CIVIL RIGHTS OF STUDENTS AND OF TEACHERS AND OTHER SCHOOL EMPLOYEES.

(2) REVIEW OF ENFORCEMENT ACTIVITIES.-SUCH REPORT SHALL INCLUDE A REVIEW OF THE ENFORCEMENT ACTIVITIES OF FEDERAL AGENCIES, INCLUDING THE DEPARTMENTS OF JUSTICE AND EDUCATION, TO DETERMINE IF THOSE AGENCIES ARE PROPERLY PROTECTING THE RELIGIOUS FREEDOM IN SCHOOLS.

(3) DESCRIPTION OF RIGHTS.-SUCH REPORT SHALL ALSO INCLUDE A DESCRIPTION OF-

(A) THE RIGHTS OF STUDENTS AND OTHERS UNDER THE FEDERAL EQUAL ACCESS ACT *(20 U.S.C. 4071* ET SEQ.), CONSTITUTIONAL PROVISIONS REGARDING EQUAL ACCESS, AND OTHER SIMILAR LAWS;

(B) THE RIGHTS OF STUDENTS AND TEACHERS AND OTHER SCHOOL EMPLOYEES TO BE FREE FROM DISCRIMINATION IN MATTERS OF RELIGIOUS EXPRESSION AND THE ACCOMMODATION OF THE FREE EXERCISE OF RELIGION; AND

(C) ISSUES RELATING TO RELIGIOUS NON-DISCRIMINATION IN CURRICULUM CONSTRUCTION.

(D) CRISIS OF YOUNG AFRICAN-AMERICAN MALES REPORT.-NOT LATER THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON THE CRISIS OF YOUNG AFRICAN-AMERICAN MALES.

(E) FAIR EMPLOYMENT LAW ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON FAIR EMPLOYMENT LAW ENFORCEMENT.

(F) REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS.-NOT LATER THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL DEVELOP AND CARRY OUT A STUDY ON THE CIVIL RIGHTS IMPLICATIONS OF REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS, AND REPORT THE RESULTS OF SUCH STUDY UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983.

SEC. 9. ADVISORY COMMITTEES.

Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(d)) is amended by adding at the end the following: "The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.".

Passed the House of Representatives March 18, 1998.

Attest:

Robin H. Carle,

* Clerk.*

## i. H.R. 3117: Version 2

LEXSEE 105 H.R. 3117

FULL TEXT OF BILLS

105TH CONGRESS; 2ND SESSION
IN THE HOUSE OF REPRESENTATIVES
AS REPORTED IN THE HOUSE

H. R. 3117

*1998 H.R. 3117; 105 H.R. 3117*

Retrieve Bill Tracking Report

SYNOPSIS:

A BILL To reauthorize the United States Commission on Civil Rights, and for other purposes.

DATE OF INTRODUCTION: JANUARY 28, 1998

DATE OF VERSION: MARCH 13, 1998 -- VERSION: 2

SPONSOR(S):
Mr. CANADY OF FLORIDA (FOR HIMSELF AND MR. SCOTT) INTRODUCED THE FOLLOWING BILL; WHICH WAS REFERRED TO THE COMMITTEE ON THE JUDICIARY

TEXT:
* Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled, *
*SECTION 1. SHORT TITLE. *
* This Act may be cited as the "Civil Rights Commission Act of 1998". *
*SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS. *
* (a) EXTENSION.-SECTION 6 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *
**(42 U.S.C. 1975D)* IS AMENDED BY STRIKING "1996" AND INSERTING "2001". *
* (B) AUTHORIZATION.-THE FIRST SENTENCE OF SECTION 5 OF THE CIVIL RIGHTS*
*COMMISSION ACT OF 1983 *(42 U.S.C. 1975C)* IS AMENDED TO READ "THERE ARE *
*AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY TO CARRY OUT*
*THIS ACT FOR FISCAL YEARS THROUGH FISCAL YEAR 2001.". *
*SEC. 3. STAFF DIRECTOR. *
* Section 4(a)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. *
*1975b(a)(1)) is amended- *
* (1) by striking "There shall" and inserting the following: *
* "(A) IN GENERAL.-THERE SHALL"; *
* (2) BY STRIKING "(A)" AND INSERTING THE FOLLOWING: *
* "(I)"; *
* (3) BY STRIKING "(B)" AND INSERTING THE FOLLOWING: *
* "(II)"; AND *
* (4) BY ADDING AT THE END THE FOLLOWING: *
* "(B) TERM OF OFFICE.-THE TERM OF OFFICE OF THE STAFF DIRECTOR *
* SHALL BE 4 YEARS. *
* "(C) REVIEW AND RETENTION.-THE COMMISSION SHALL ANNUALLY *
* REVIEW THE PERFORMANCE OF THE STAFF DIRECTOR.". *
*SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY, SUNSHINE, AND *
*ADVISORY COMMITTEE ACTS. *
* Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)**
*is amended by adding at the end the following: *
* "(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.-THE COMMISSION SHALL BE*
*CONSIDERED TO BE AN AGENCY, AS DEFINED IN SECTION 551(1) OF TITLE 5, *
*UNITED STATES CODE, FOR THE PURPOSES OF SECTIONS 552, 552A, AND 552B OF *

*TITLE 5, UNITED STATES CODE, AND FOR THE PURPOSES OF THE FEDERAL *
*ADVISORY COMMITTEE ACT.". *
*SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT. *
* Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)** 
*is further amended by adding at the end the following: *
* "(g) INDEPENDENT AUDIT.-BEGINNING WITH THE FISCAL YEAR ENDING *
*SEPTEMBER 30, 1998, AND EACH YEAR THEREAFTER, THE COMMISSION SHALL *
*PREPARE AN ANNUAL FINANCIAL STATEMENT IN ACCORDANCE WITH SECTION 3515 OF*
*TITLE 31, UNITED STATES CODE, AND SHALL HAVE THE STATEMENT AUDITED BY AN*
*INDEPENDENT EXTERNAL AUDITOR IN ACCORDANCE WITH SECTION 3521 OF SUCH *
*TITLE.". *
*SEC. 6. TERMS OF MEMBERS. *
* (a) IN GENERAL.-SECTION 2(C) OF THE CIVIL RIGHTS COMMISSION ACT OF *
*1983 *(42 U.S.C. 1975*(C)) IS AMENDED BY STRIKING "6 YEARS" AND INSERTING *
*"5 YEARS". *
* (B) APPLICABILITY.-THE AMENDMENT MADE BY THIS SECTION SHALL APPLY ONLY*
*WITH RESPECT TO TERMS OF OFFICE COMMENCING AFTER THE DATE OF THE *
*ENACTMENT OF THIS ACT. *
*SEC. 7. REPORTS. *
* Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. *
*1975a(c)(1)) is amended by striking "at least one report annually" and *
*inserting "a report on or before September 30 of each year". *
*SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION. *
* (a) IMPLEMENTATION OF GAO RECOMMENDATIONS.-THE COMMISSION SHALL, NOT *
*LATER THAN JUNE 30, 1998, IMPLEMENT THE UNITED STATES GENERAL ACCOUNTING*
*OFFICE RECOMMENDATIONS REGARDING REVISION OF THE COMMISSION'S *
*ADMINISTRATIVE INSTRUCTIONS AND STRUCTURAL REGULATIONS TO REFLECT THE *
*CURRENT AGENCY STRUCTURE, AND ESTABLISH A MANAGEMENT INFORMATION SYSTEM *
*TO ENHANCE THE OVERSIGHT AND PROJECT EFFICIENCY OF THE COMMISSION. *
* (B) ADA ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER 30, 1998, THE *
*COMMISSION SHALL COMPLETE AND *
*submit a report regarding the enforcement of the Americans with *
*Disabilities Act of 1990. *
* (c) RELIGIOUS FREEDOM IN PUBLIC SCHOOLS.- *
* (1) REPORT REQUIRED.-NOT LATER THAN SEPTEMBER 30, 1998, THE *
* COMMISSION SHALL PREPARE, AND SUBMIT UNDER SECTION 3 OF THE CIVIL *
* RIGHTS COMMISSION ACT OF 1983, A REPORT EVALUATING THE POLICIES AND *

* PRACTICES OF PUBLIC SCHOOLS TO DETERMINE WHETHER LAWS ARE BEING *
* EFFECTIVELY ENFORCED TO PREVENT DISCRIMINATION OR THE DENIAL OF *
* EQUAL PROTECTION OF THE LAW BASED ON RELIGION, AND WHETHER SUCH LAWS*
* NEED TO BE CHANGED IN ORDER TO PROTECT MORE FULLY THE CONSTITUTIONAL*
* AND CIVIL RIGHTS OF STUDENTS AND OF TEACHERS AND OTHER SCHOOL *
* EMPLOYEES. *
* (2) REVIEW OF ENFORCEMENT ACTIVITIES.-SUCH REPORT SHALL INCLUDE A *
* REVIEW OF THE ENFORCEMENT ACTIVITIES OF FEDERAL AGENCIES, INCLUDING *
* THE DEPARTMENTS OF JUSTICE AND EDUCATION, TO DETERMINE IF THOSE *
* AGENCIES ARE PROPERLY PROTECTING THE RELIGIOUS FREEDOM IN SCHOOLS. *
* (3) DESCRIPTION OF RIGHTS.-SUCH REPORT SHALL ALSO INCLUDE A *
* DESCRIPTION OF- *
* (A) THE RIGHTS OF STUDENTS AND OTHERS UNDER THE FEDERAL EQUAL *
* ACCESS ACT *(20 U.S.C. 4071* ET SEQ.), CONSTITUTIONAL PROVISIONS *
* REGARDING EQUAL ACCESS, AND OTHER SIMILAR LAWS; AND *
* (B) THE RIGHTS OF STUDENTS AND TEACHERS AND OTHER SCHOOL *
* EMPLOYEES TO BE FREE FROM DISCRIMINATION IN MATTERS OF RELIGIOUS*
* EXPRESSION AND THE ACCOMMODATION OF THE FREE EXERCISE OF *
* RELIGION; AND *
* (C) ISSUES RELATING TO RELIGIOUS NON-DISCRIMINATION IN *
* CURRICULUM CONSTRUCTION. *
* (D) CRISIS OF YOUNG AFRICAN-AMERICAN MALES REPORT.-NOT LATER THAN *
*SEPTEMBER 30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON THE CRISIS *
*OF YOUNG AFRICAN-AMERICAN MALES. *
* (E) FAIR EMPLOYMENT LAW ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER *
*30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON FAIR EMPLOYMENT LAW *
*ENFORCEMENT. *
* (F) REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS.-NOT LATER*
*THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL DEVELOP AND CARRY OUT A *
*STUDY ON THE CIVIL RIGHTS IMPLICATIONS OF REGULATORY OBSTACLES *
*CONFRONTING MINORITY ENTREPRENEURS, AND REPORT THE RESULTS OF SUCH STUDY*
*UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983. *
*SEC. 9. ADVISORY COMMITTEES. *
* Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. *
*1975a(d)) is amended by adding at the end the following: "The purpose of*
*each such advisory committee shall be to conduct fact finding activities*
*and develop findings or recommendations for the Commission. Any report *

*by such an advisory committee to the Commission shall be fairly balanced*
*as to the viewpoints represented.". *
Union Calendar No. 248

## ii. HR 3117: Version 3

105TH CONGRESS; 2ND SESSION
IN THE HOUSE OF REPRESENTATIVES
AS ENGROSSED IN THE HOUSE

H. R. 3117

*1998 H.R. 3117; 105 H.R. 3117*

Retrieve Bill Tracking Report

SYNOPSIS:
AN ACT To reauthorize the United States Commission on Civil Rights, and for other purposes.

DATE OF INTRODUCTION: JANUARY 27, 1998

DATE OF VERSION: MARCH 19, 1998 -- VERSION: 3

SPONSOR(S):
Sponsor not included in this printed version.

TEXT:
*Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled*,
SECTION 1. SHORT TITLE.
This Act may be cited as the "Civil Rights Commission Act of 1998".
SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.
(a) EXTENSION.-SECTION 6 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 (42 U.S.C. 1975D) IS AMENDED BY STRIKING "1996" AND INSERTING "2001".
(B) AUTHORIZATION.-THE FIRST SENTENCE OF SECTION 5 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975C)* IS AMENDED TO READ "THERE ARE

AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY TO CARRY OUT
THIS ACT FOR FISCAL YEARS THROUGH FISCAL YEAR 2001.".

SEC. 3. STAFF DIRECTOR.

Section 4(a)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)(1)) is amended-

(1) by striking "There shall" and inserting the following:
"(A) IN GENERAL.-THERE SHALL";

(2) BY STRIKING "(A)" AND INSERTING THE FOLLOWING:
"(I)";

(3) BY STRIKING "(B)" AND INSERTING THE FOLLOWING:
"(II)"; AND

(4) BY ADDING AT THE END THE FOLLOWING:
"(B) TERM OF OFFICE.-THE TERM OF OFFICE OF THE STAFF DIRECTOR SHALL BE 4 YEARS.
"(C) REVIEW AND RETENTION.-THE COMMISSION SHALL ANNUALLY REVIEW THE PERFORMANCE OF THE STAFF DIRECTOR.".

SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY, SUNSHINE, AND ADVISORY COMMITTEE ACTS.

Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is amended by adding at the end the following:

"(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.-THE COMMISSION SHALL BE CONSIDERED TO BE AN AGENCY, AS DEFINED IN SECTION 551(1) OF TITLE 5, UNITED STATES CODE, FOR THE PURPOSES OF SECTIONS 552, 552A, AND 552B OF TITLE 5, UNITED STATES CODE, AND FOR THE PURPOSES OF THE FEDERAL ADVISORY
COMMITTEE ACT.".

SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.

Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is further amended by adding at the end the following:

"(g) INDEPENDENT AUDIT.-BEGINNING WITH THE FISCAL YEAR ENDING SEPTEMBER
30, 1998, AND EACH YEAR THEREAFTER, THE COMMISSION SHALL PREPARE AN ANNUAL FINANCIAL STATEMENT IN ACCORDANCE WITH SECTION 3515 OF TITLE 31, UNITED STATES CODE, AND SHALL HAVE THE STATEMENT AUDITED BY AN INDEPENDENT EXTERNAL AUDITOR IN ACCORDANCE WITH SECTION 3521 OF SUCH TITLE.".

SEC. 6. TERMS OF MEMBERS.

(a) IN GENERAL.-SECTION 2(C) OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975*(C)) IS AMENDED BY STRIKING "6 YEARS" AND INSERTING "5 YEARS".

(B) APPLICABILITY.-THE AMENDMENT MADE BY THIS SECTION SHALL APPLY ONLY
WITH RESPECT TO TERMS OF OFFICE COMMENCING AFTER THE DATE OF THE ENACTMENT OF THIS ACT.

SEC. 7. REPORTS.

Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)(1)) is amended by striking "at least one report annually" and inserting "a report on or before September 30 of each year".

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

(a) IMPLEMENTATION OF GAO RECOMMENDATIONS.-THE COMMISSION SHALL, NOT LATER THAN JUNE 30, 1998, IMPLEMENT THE UNITED STATES GENERAL ACCOUNTING OFFICE RECOMMENDATIONS REGARDING REVISION OF THE COMMISSION'S ADMINISTRATIVE INSTRUCTIONS AND STRUCTURAL REGULATIONS TO REFLECT THE CURRENT AGENCY STRUCTURE, AND ESTABLISH A MANAGEMENT INFORMATION SYSTEM TO ENHANCE THE OVERSIGHT AND PROJECT EFFICIENCY OF THE COMMISSION.

(B) ADA ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL COMPLETE AND SUBMIT A REPORT REGARDING THE ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

(C) RELIGIOUS FREEDOM IN PUBLIC SCHOOLS.-

(1) REPORT REQUIRED.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL PREPARE, AND SUBMIT UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983, A REPORT EVALUATING THE POLICIES AND PRACTICES OF PUBLIC SCHOOLS TO DETERMINE WHETHER LAWS ARE BEING EFFECTIVELY ENFORCED TO PREVENT DISCRIMINATION OR THE DENIAL OF EQUAL PROTECTION OF THE LAW BASED ON RELIGION, AND WHETHER SUCH LAWS NEED TO BE CHANGED IN ORDER TO PROTECT MORE FULLY THE CONSTITUTIONAL AND CIVIL RIGHTS OF STUDENTS AND OF TEACHERS AND OTHER SCHOOL EMPLOYEES.

(2) REVIEW OF ENFORCEMENT ACTIVITIES.-SUCH REPORT SHALL INCLUDE A REVIEW OF THE ENFORCEMENT ACTIVITIES OF FEDERAL AGENCIES, INCLUDING THE DEPARTMENTS OF JUSTICE AND EDUCATION, TO DETERMINE IF THOSE AGENCIES ARE PROPERLY PROTECTING THE RELIGIOUS FREEDOM IN SCHOOLS.

(3) DESCRIPTION OF RIGHTS.-SUCH REPORT SHALL ALSO INCLUDE A DESCRIPTION OF-

(A) THE RIGHTS OF STUDENTS AND OTHERS UNDER THE FEDERAL EQUAL ACCESS ACT *(20 U.S.C. 4071* ET SEQ.), CONSTITUTIONAL PROVISIONS REGARDING EQUAL ACCESS, AND OTHER SIMILAR LAWS;

(B) THE RIGHTS OF STUDENTS AND TEACHERS AND OTHER SCHOOL EMPLOYEES TO BE FREE FROM DISCRIMINATION IN MATTERS OF RELIGIOUS EXPRESSION AND THE ACCOMMODATION OF THE FREE EXERCISE OF RELIGION; AND

(C) ISSUES RELATING TO RELIGIOUS NON-DISCRIMINATION IN CURRICULUM CONSTRUCTION.

(D) CRISIS OF YOUNG AFRICAN-AMERICAN MALES REPORT.-NOT LATER THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON THE CRISIS OF YOUNG AFRICAN-AMERICAN MALES.

(E) FAIR EMPLOYMENT LAW ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER
30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON FAIR EMPLOYMENT LAW ENFORCEMENT.

(F) REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS.-NOT LATER
THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL DEVELOP AND CARRY OUT A STUDY ON THE CIVIL RIGHTS IMPLICATIONS OF REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS, AND REPORT THE RESULTS OF SUCH STUDY
UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983.

SEC. 9. ADVISORY COMMITTEES.

Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(d)) is amended by adding at the end the following: "The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.".

Passed the House of Representatives March 18, 1998.

Attest: Clerk

## iii. H.R. 3117 as Reported to the Committee of the Whole House

105TH CONGRESS
2D SESSION

H. R. 3117

Report No. 105-439

---

A BILL

To reauthorize the United States Commission on Civil Rights, and for other purposes.

---

MARCH 12, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

105TH CONGRESS; 2ND SESSION
IN THE HOUSE OF REPRESENTATIVES

AS INTRODUCED IN THE HOUSE

H. R. 3117

*1998 H.R. 3117; 105 H.R. 3117*

Retrieve Bill Tracking Report

SYNOPSIS:
A BILL To reauthorize the United States Commission on Civil Rights, and for other purposes.

DATE OF INTRODUCTION: JANUARY 28, 1998

DATE OF VERSION: FEBRUARY 2, 1998 -- VERSION: 1

SPONSOR(S):
Mr. CANADY OF FLORIDA (FOR HIMSELF AND MR. SCOTT) INTRODUCED THE FOLLOWING BILL; WHICH WAS REFERRED TO THE COMMITTEE ON THE JUDICIARY

TEXT:
* Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled, *
SECTION 1. SHORT TITLE.
This Act may be cited as the "Civil Rights Commission Act of 1998".
SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.
(a) EXTENSION.-SECTION 6 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 (42 U.S.C. 1975D) IS AMENDED BY STRIKING "1996" AND INSERTING "2001".
(B) AUTHORIZATION.-THE FIRST SENTENCE OF SECTION 5 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975C)* IS AMENDED TO READ "THERE ARE AUTHORIZED TO BE APPROPRIATED SUCH SUMS AS MAY BE NECESSARY TO CARRY OUT
THIS ACT FOR FISCAL YEARS THROUGH FISCAL YEAR 2001.".
SEC. 3. STAFF DIRECTOR.
Section 4(a) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)) is amended-
(1) by striking "There shall" and inserting the following:

"(A) IN GENERAL.-THERE SHALL";

(2) BY STRIKING "(A)" AND INSERTING THE FOLLOWING:

"(I)";

(3) BY STRIKING "(B)" AND INSERTING THE FOLLOWING:

"(II)"; AND

(4) BY ADDING AT THE END THE FOLLOWING:

"(2) TERM OF OFFICE.-THE TERM OF OFFICE OF THE STAFF DIRECTOR SHALL BE 4 YEARS.

"(3) REVIEW AND RETENTION.-THE COMMISSION SHALL ANNUALLY REVIEW THE PERFORMANCE OF THE STAFF DIRECTOR.".

SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY, SUNSHINE, AND ADVISORY COMMITTEE ACTS.

Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is amended by adding at the end the following:

"(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.-THE COMMISSION SHALL BE CONSIDERED TO BE AN AGENCY, AS DEFINED IN SECTION 551(1) OF TITLE 5, UNITED STATES CODE, FOR THE PURPOSES OF SECTIONS 552, 552A, AND 552B OF TITLE 5, UNITED STATES CODE, AND FOR THE PURPOSES OF THE FEDERAL ADVISORY COMMITTEE ACT.".

SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.

Section 4 of the Civil Rights Commission Act of 1983 *(42 U.S.C. 1975b)* is further amended by adding at the end the following:

"(g) INDEPENDENT AUDIT.-BEGINNING WITH THE FISCAL YEAR ENDING SEPTEMBER 30, 1998, AND EACH YEAR THEREAFTER, THE COMMISSION SHALL PREPARE AN ANNUAL FINANCIAL STATEMENT IN ACCORDANCE WITH SECTION 3515 OF TITLE 31, UNITED STATES CODE, AND SHALL HAVE THE STATEMENT AUDITED BY AN INDEPENDENT EXTERNAL AUDITOR IN ACCORDANCE WITH SECTION 3521 OF SUCH TITLE.".

SEC. 6. TERMS OF MEMBERS.

(a) IN GENERAL.-SECTION 2(C) OF THE CIVIL RIGHTS COMMISSION ACT OF 1983 *(42 U.S.C. 1975*(C)) IS AMENDED BY STRIKING "6 YEARS" AND INSERTING "4 YEARS".

(B) APPLICABILITY.-THE AMENDMENT MADE BY THIS SECTION SHALL APPLY ONLY WITH RESPECT TO TERMS OF OFFICE COMMENCING AFTER THE DATE OF THE ENACTMENT OF THIS ACT.

SEC. 7. REPORTS.

Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)(1)) is amended by striking "at least one report annually" and inserting "a report on or before September 30 of each year".

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

(a) IMPLEMENTATION OF GAO RECOMMENDATIONS.-THE COMMISSION SHALL, NOT

LATER THAN JUNE 30, 1998, IMPLEMENT THE UNITED STATES GENERAL ACCOUNTING
OFFICE RECOMMENDATIONS REGARDING REVISION OF THE COMMISSION'S ADMINISTRATIVE INSTRUCTIONS AND STRUCTURAL REGULATIONS TO REFLECT THE
CURRENT AGENCY STRUCTURE, AND ESTABLISH A MANAGEMENT INFORMATION SYSTEM
TO ENHANCE THE OVERSIGHT AND PROJECT EFFICIENCY OF THE COMMISSION.

(B) ADA ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL COMPLETE AND SUBMIT A REPORT REGARDING THE ENFORCEMENT
OF THE AMERICANS WITH DISABILITIES ACT OF 1990.

(C) RELIGIOUS FREEDOM IN PUBLIC SCHOOLS.-

(1) REPORT REQUIRED.-NOT LATER THAN SEPTEMBER 30, 1998, THE COMMISSION SHALL PREPARE, AND SUBMIT UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983, A REPORT EVALUATING THE POLICIES AND PRACTICES OF PUBLIC SCHOOLS TO DETERMINE WHETHER LAWS ARE BEING EFFECTIVELY ENFORCED TO PREVENT DISCRIMINATION OR THE DENIAL OF EQUAL
PROTECTION OF THE LAW BASED ON RELIGION, AND WHETHER SUCH LAWS NEED
TO BE CHANGED IN ORDER TO PROTECT MORE FULLY THE CONSTITUTIONAL AND
CIVIL RIGHTS OF STUDENTS AND OF TEACHERS AND OTHER SCHOOL EMPLOYEES.

(2) REVIEW OF ENFORCEMENT ACTIVITIES.-SUCH REPORT SHALL INCLUDE A REVIEW OF THE ENFORCEMENT ACTIVITIES OF FEDERAL AGENCIES, INCLUDING THE DEPARTMENTS OF JUSTICE AND EDUCATION, TO DETERMINE IF THOSE AGENCIES ARE PROPERLY PROTECTING THE RELIGIOUS FREEDOM IN SCHOOLS.

(3) DESCRIPTION OF RIGHTS.-SUCH REPORT SHALL ALSO INCLUDE A DESCRIPTION OF-

(A) THE RIGHTS OF STUDENTS AND OTHERS UNDER THE FEDERAL EQUAL ACCESS ACT *(20 U.S.C. 4071* ET SEQ.), CONSTITUTIONAL PROVISIONS REGARDING EQUAL ACCESS, AND OTHER SIMILAR LAWS; AND

(B) THE RIGHTS OF STUDENTS AND TEACHERS AND OTHER SCHOOL EMPLOYEES TO BE FREE FROM DISCRIMINATION IN MATTERS OF RELIGIOUS EXPRESSION AND THE ACCOMMODATION OF THE FREE EXERCISE OF RELIGION; AND

(C) ISSUES RELATING TO RELIGIOUS NON-DISCRIMINATION IN CURRICULUM CONSTRUCTION.

(D) CRISIS OF YOUNG AFRICAN-AMERICAN MALES REPORT.-NOT LATER THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON THE CRISIS OF YOUNG AFRICAN-AMERICAN MALES.

(E) FAIR EMPLOYMENT LAW ENFORCEMENT REPORT.-NOT LATER THAN SEPTEMBER
30, 1999, THE COMMISSION SHALL SUBMIT A REPORT ON FAIR EMPLOYMENT LAW

ENFORCEMENT.

(F) REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS.-NOT LATER
THAN SEPTEMBER 30, 1999, THE COMMISSION SHALL DEVELOP AND CARRY OUT A STUDY ON THE CIVIL RIGHTS IMPLICATIONS OF REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS, AND REPORT THE RESULTS OF SUCH STUDY
UNDER SECTION 3 OF THE CIVIL RIGHTS COMMISSION ACT OF 1983.

SEC. 9. ADVISORY COMMITTEES.

Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(d)) is amended by adding at the end the following: "The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.".

## E. 144 Cong Rec H 1254: Congressional Record on USCCR Reauthorization

29 of 212 DOCUMENTS

CONGRESSIONAL RECORD -- *HOUSE*

Wednesday, March 18, 1998

105th Congress, 2nd Session

*144 Cong Rec H 1254*

REFERENCE: Vol. 144, No. 30

TITLE: CIVIL RIGHTS COMMISSION ACT OF 1998

SPEAKER: Mr. CANADY OF FLORIDA; Mr. SCOTT; Ms. JACKSON-LEE OF TEXAS; Mr. CONYERS

BILL NUMBER: H.R. 3117 Retrieve Bill Tracking Report

Retrieve full text of bill

TEXT: **[*H1254]**

Mr. CANADY of Florida. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3117) to reauthorize the United States Commission on Civil Rights, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Act of 1998".

SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.

(a) Extension.--Section 6 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975d) is amended by striking "1996" and inserting "2001".

(b) Authorization.--The first sentence of section 5 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975c) is amended to read "There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal years through fiscal year 2001.".

SEC. 3. STAFF DIRECTOR.

Section 4(a)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)(1)) is amended--

(1) by striking "There shall" and inserting the following:

"(A) In general.--There shall";

(2) by striking "(A)" and inserting the following:

"(i)";

(3) by striking "(B)" and inserting the following:

"(ii)"; and

(4) by adding at the end the following:

"(B) Term of office.--The term of office of the Staff Director shall be 4 years.

"(C) Review and retention.--The Commission shall annually review the performance of the staff director.".

SEC. 4. APPLICATION OF FREEDOM OF INFORMATION, PRIVACY,

SUNSHINE, AND ADVISORY COMMITTEE ACTS.

Section 4 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b) is amended by adding at the end the following:

"(f) Application of Certain Provisions of Law.--The Commission shall be considered to be an agency, as defined in section 551(1) of title 5, United States Code, for the purposes of sections 552, 552a, and 552b of title 5, United States Code, and for the purposes of the Federal Advisory Committee Act.".

SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.

Section 4 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b) is further amended by adding at the end the following:

"(g) Independent Audit.--Beginning with the fiscal year ending September 30, 1998, and each year thereafter, the Commission shall prepare an annual financial statement in accordance with section 3515 of title 31, United States Code,

and shall have the statement audited by an independent external auditor in accordance with section 3521 of such title.".

SEC. 6. TERMS OF MEMBERS.

(a) In General.--Section 2(c) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975(c)) is amended by striking "6 years" and inserting "5 years".

(b) Applicability.--The amendment made by this section shall apply only with respect to terms of office commencing after the date of the enactment of this Act.

SEC. 7. REPORTS.

Section 3(c)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)(1)) is amended by striking "at least one report annually" and inserting "a report on or before September 30 of each year".

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

(a) Implementation of GAO Recommendations.--The Commission shall, not later than June 30, 1998, implement the United States General Accounting Office recommendations regarding revision of the Commission's Administrative Instructions and structural regulations to reflect the current agency structure, and establish a management information system to enhance the oversight and project efficiency of the Commission.

(b) ADA Enforcement Report.--Not later than September 30, 1998, the Commission shall complete and submit a report regarding the enforcement of the Americans with Disabilities Act of 1990.

(c) Religious Freedom in Public Schools.--

(1) Report required.--Not later than September 30, 1998, the Commission shall prepare, and submit under section 3 of the Civil Rights Commission Act of 1983, a report evaluating the policies and practices of public schools to determine whether laws are being effectively enforced to prevent

discrimination or the denial of equal protection of the law based on religion, and whether such laws need to be changed in order to protect more fully the constitutional and civil rights of students and of teachers and other school employees.

(2) Review of enforcement activities.--Such report shall include a review of the enforcement activities of Federal agencies, including the Departments of Justice and Education, to determine if those agencies are properly protecting the religious freedom in schools.

(3) Description of rights.--Such report shall also include a description of--

(A) the rights of students and others under the Federal Equal Access Act (20 U.S.C. 4071 et seq.), constitutional provisions regarding equal access, and other similar laws; and

(B) the rights of students and teachers and other school employees to be free from discrimination in matters of religious expression and the accommodation of the free

exercise of religion; and

(C) issues relating to religious non-discrimination in curriculum construction.

(d) Crisis of Young African-American Males Report.--Not later than September 30, 1999, the Commission shall submit a report on the crisis of young African-American males.

(e) Fair Employment Law Enforcement Report.--Not later than September 30, 1999, the Commission shall submit a report on fair employment law enforcement.

(f) Regulatory Obstacles Confronting Minority Entrepreneurs.--Not later than September 30, 1999, the Commission shall develop and carry out a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs, and report the results of such study under section 3 of the Civil Rights Commission Act of 1983.

SEC. 9. ADVISORY COMMITTEES.

Section 3(d) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(d)) is amended by adding at the end the following: "The purpose of each such advisory committee shall be to conduct fact finding activities and develop findings or recommendations for the Commission. Any report by such an advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. Canady) and the gentleman from Virginia (Mr. Scott) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. Canady).

General Leave

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the

gentleman from Florida?

There was no objection.

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3117, the Civil Rights Commission Act of 1998, reauthorizes the U.S. Commission on Civil Rights through fiscal year 2001, and institutes reforms to help ensure that the commission will be more effective in pursuing its important mission.

The Committee on the Judiciary considered this legislation on March 3 of

**[*H1255]**

this year, adopted 1 amendment by voice vote, and reported the bill favorably to the full House by voice vote.

The Civil Rights Commission is an independent, bipartisan commission originally established by the Civil Rights Act of 1957. The Commission's statutory authorization expired on September 30 of 1996. I

am pleased that we have developed bipartisan legislation making the Civil Rights Commission more effective in carrying out its important mission. It is fitting that a reauthorization bill is bipartisan, since one of the strengths of the commission is its bipartisan nature.

The bill contains a number of provisions designed to strengthen and improve the performance of the commission. The current statute is silent as to the specific term of office for and accountability of the Commission's Staff Director. Since the Staff Director apparently wields considerable power within the Commission, it is important that the Staff Director be accountable to the appointed members of the Commission. Accordingly, section 3 of the bill provides for a 4-year term of office for the Staff Director, and requires that the Commission annually review the performance of the Staff Director.

Section 4 of our bill applies the Freedom of Information Act, the Privacy Act, the Sunshine Act, and the Federal Advisory Committee Act to the Commission's operations. These laws are designed to ensure that government conducts its operations in the spirit of openness, respect for the civil rights of individuals, and equal access. The Civil Rights Commission should comply with all of these important laws.

In a June, 1997, report the U.S. General Accounting Office found that

the Commission's management controls over its operations are weak and do not ensure that the Commission is able to meet its statutory responsibilities, its spending data is not maintained by officer function, and furthermore, that its operations have not been audited by an outside accounting firm.

Every governmental entity should periodically review its fiscal operations, and the Commission is certainly no exception. Accordingly, section 5 of our bill requires that the Commission prepare an annual financial statement for audit by an independent external auditor.

Section 6 changes the term of membership for future commissioners from its current 6 years to 5 years. Under this section, existing commissioners' terms are unaffected, and there is no limit to the number of times a commissioner can be reappointed. Reduced term length could help to energize the Commission, bring in new perspectives, and make the Commission more effective and responsive.

Section 8 requires the Commission to implement the General Accounting Office recommendations calling for revision of the Commission's structural regulations to reflect the current agency structure, and for the establishment of a management information system to enhance the efficiency of the Commission. GAO identified these reforms as necessary

for the continued viability of the Commission, which the GAO had termed an agency in disarray.

Current law provides that Congress may require the Commission to submit reports as Congress shall deem appropriate. Throughout the Commission's history, Congress has identified specific projects for the Commission to complete. In line with this practice, section 8 of our bill requires the Commission to complete its report regarding the enforcement of the Americans with Disabilities Act, its report regarding religious freedom in the schools, its report on the crisis of young African American males, its report on fair employment law enforcement, and its work on the civil rights implication of regulatory obstruction confronting minority entrepreneurs.

These are all projects the Commission itself has independently chosen to conduct, so this provision merely ensures timely completion of the work which the Commission has initiated on these projects.

Section 9 sets forth the purpose of the Commission's State advisory committees, which is to conduct fact-finding activities and develop findings or recommendations by the Commission, and provides that any report by such advisory committee to the Commission shall be fairly balanced as to the viewpoints represented.

Again, we believe that the bipartisan nature of the Commission is its strength, and it is important that this viewpoint balance be reflected at all levels of the Commission's work.

Finally, I want to thank the gentleman from Virginia (Mr. Scott), the ranking member of the Subcommittee on the Constitution, for his leadership and work in developing this legislation. I think it is important that we move forward with the reauthorization of the Civil Rights Commission with necessary reforms which are contained in the legislation. I think this will be good for the Commission and good for advancing the agenda of civil rights in this country.

Mr. Speaker, I reserve the balance of my time.

time 1100

Mr. SCOTT. Mr. Speaker, I yield myself such time as I may consume.

I rise in favor of H.R. 3117, the Civil Rights Commission Act of 1998. The United States Commission on Civil Rights was established in 1959 to provide the country with advice and counsel on how to best

address our still complex and persevering problems in civil rights.

Although the Commission was initially intended to last only 2 years, because of its importance and good work, it still serves as a valuable tool in our war against bigotry. In recent years the Commission has held hearings and released reports on issues such as church burnings, employment discrimination, police brutality and hate crimes. In addition, the Commission has made plans to study disability discrimination and the religious freedom in schools.

The Commission's work on Title VI of the Civil Rights Act is particularly timely. Title VI prohibits discrimination on the basis of race and national origin in federally-assisted programs. After extensive study of Justice Department's Title VI enforcement efforts, the Commission concluded that the Justice Department's enforcement efforts were inadequate.

As a result of this report, the Justice Department has improved its Title VI enforcement program, and other Federal and State agencies have made significant improvements as well. The Department of Agriculture has relied heavily on this report in its response to the problem of discrimination against black farmers. No other agency provides this crucial information. Without civil rights, without the Civil Rights

Commission, one would wonder how thoroughly such concerns and underenforcement and noncompliance would be addressed.

Mr. Speaker, last year, as the chairman of the subcommittee has indicated, the General Accounting Office released a report on the Civil Rights Commission. The report pointed out a number of management and organizational problems and made recommendations on how the Commission could best address these concerns.

The Commission has actively moved to initiate all of the GAO's recommendations. Its management information system will soon be operational. This will allow greater accountability in program management. In addition, the Commission is in the process of implementing other GAO recommendations which provide, which will provide greater public access to the information and processes of the Commission and will better ensure staff compliance with Commission rules and regulations.

The Commission has graciously responded to the GAO's recommendations, and therefore we will enjoy an even stronger Commission.

Mr. Speaker, the Commission has some tough work ahead of it. I look forward to the Commission continuing its unyielding fight against

discrimination that still divides this country. In addition, I look forward to the Congress's full and continued support of the Civil Rights Commission.

Finally, Mr. Speaker, I would like to thank the chairman of the subcommittee, the gentleman from Florida, for his efforts and work in a bipartisan nature to make sure that the Commission was not politicized. We have worked together in this reauthorization effort. I would like to thank him again for working in a bipartisan effort.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. Jackson-Lee).

**[*H1256]**

Ms. JACKSON-LEE of Texas. Mr. Speaker, to both the chairman and ranking member, I, too, want to add my appreciation for the cooperative bipartisan effort of reauthorizing the Civil Rights Commission Act and as well continuing the funding until 2001. Dr. Berry and the Commissioners who presently serve and have served in the past have had awesome responsibility. I appreciate their leadership on the question of civil rights.

Many times in an acrimonious debate the question arises, why do we need an United States Civil Rights Commission? I am delighted that this Committee on the Judiciary through the Subcommittee on the Constitution has seen fit to continue the work of this body that, for those who may not be aware, covers issues involving charges of citizens being deprived of voting rights because of color, religion, sex, age, disability or national origin.

This Commission also collects and studies information concerning legal developments on voting rights, monitors the enforcement of Federal laws and policies from a civil rights perspective, and serves as a national clearinghouse for information. I believe that it is extremely important as our country becomes increasingly diverse that there is a commission that overseas and protects these very important rights.

I also think, as the GAO agency report, that there are and is room for improvement. I do not believe that the report focused on the lack of intent or the commitment of the Civil Rights Commission, but certainly I believe that the process of including and establishing a computerized management information system and updating internal management communication procedures is a good procedure.

I also think that it is very helpful, and I thank the committee for directing the Commission to prepare by September 30 reports on religious freedom, antidiscrimination policies and practices in public schools, the crisis among young African American males, regulatory obstacles facing minority entrepreneurs and enforcement of the Americans with Disabilities Act.

In particular with the religious freedom question and as it relates to those in public schools, as I am not in support of the religious freedom amendment that is being proposed, one of the reasons is because I say we do have religious freedom. We have the first amendment. Many times the interpretations in our local communities and public schools are excessive in terms of not allowing people to worship and to freely express their commitment to religion. I hope that this study by the U.S. Civil Rights Commission will give us the ammunition that the first amendment does right, and that those problems that are isolated throughout our Nation can be corrected by local influence.

Then I would simply say that it is extremely important as I work with young African American males in this country and in this community that we focus on the crises of discrimination with respect to African American males. In particular as they travel about the highways and

byways are they targeted by law enforcement because of no uncertain reasons. As they move in and out of neighborhoods, are they targeted; are they targeted as they go into the shopping malls of America? It is extremely important that we focus on their improvement and their growth.

Then, Mr. Speaker, I would simply like to say I hope that the Civil Rights Commission will help us in explaining to the American people the crucial and viable importance of renewing the Voter Rights Act of 1965. As late as the mayoral election in 1997, when Lee P. Brown ran in Houston, Texas, we found a circumstance of voter rights violation, of adding people to the rolls, of adding votes to the compilation that people who had not even voted, of accusations and charges circling around the question of race. We are delighted that he was elected, but we realize that there are problems. The latest congressional races in Texas we also saw discrimination and voter intimidation.

Barbara Jordan, when she was in this body, had the pleasure of amending the Voter Rights Act of 1965 to include language minorities. We saw the tragedy of the Loretta Sanchez intimidation process. I truly believe that we are not ready to eliminate the Voter Rights Act that was passed in 1965. The Civil Rights Commission in its duties will have the responsibility and the obligation to document voter rights

violations and will require us, I think, to have the basis, to have the documentation necessary to hopefully have a vigorous and serious debate on the importance of renewing the Voter Rights Act.

I would simply close, Mr. Speaker, by saying one thing in conclusion related to this whole process of court appointments which I spoke about earlier. Tragically we find that the criticism of Judge Massiah-Jackson dealt with possible vulgarities which I have no knowledge of and soft on crime. I will say that she was noted as giving some of the highest sentences of any judge.

I think the important point is we wonder about what has been said by judges of years past still on the bench in the deep South when vulgarities were talked about by various judges as it related to those civil rights workers and African Americans who were pressing forward for their rights. With that I would say that it is important that the Civil Rights Commission continues to monitor these violations and hopefully that it will give us the momentum to renew the Voter Rights Act that needs to be renewed.

The Commission that we seek to reauthorize here today was created in 1957, at a time in our nation's history when the notion of universal civil rights was still in doubt. Even though just over two scores

later, we have made great strides in the area of civil rights, the distance we still have to travel is nonetheless significant. Therefore, Mr. Speaker, I rise in support of H.R. 3117 and the reauthorization of the Civil Rights Commission.

While I certainly support the reauthorization of this Commission, I have some serious questions about both the language of this bill and the delays that this reauthorization action has faced thus far in the legislative process. In particular, some of the restrictions on the purview of the Commission in language of this bill concern me greatly. The reduction in length of Commissioners' terms and the short duration of this reauthorization bill seem to reflect a diminishing regard for civil rights in this Congress.

As is often the case in a serious discussion about civil rights, I return to the famous legal phrase of "Where there's a right, there's a remedy." There is absolutely a right for Americans to be free from infringement upon their civil rights. When these rights are violated, victims are entitled to a remedy. The Commission on Civil Rights provides one such remedy. The Commission investigates charges of civil rights violations, collects information on voting rights, monitors law enforcement activities, and educates the public on civil rights issues. It is also imperative that we renew the Voting Rights Act when it is up

for renewal next year. Last night in a special order we celebrated the 33rd anniversary of the Selma March which was held so that every American citizen can exercise his right to vote. We must renew the Voting Rights Act of 1965. Why are we not supporting these efforts with every possible resource?

We should not allow ideological differences over issues such as affirmative action to cloud the debate over this particular bill. Of course, I believe that the very fact that the existence of discrimination exists to the extent that this Commission is still so necessary evidences the need for continued affirmative action. However, whatever your perspective, the positive activities of this Commission cannot be overlooked.

The Commission has had some organizational and managerial issues that it is currently remedying. We cannot allow administrative problems to overshadow the substantive good work accomplished by the Commission on Civil Rights. Attempts to distract our focus from the investigatory and educational accomplishments of the Commission are rooted in either an opposition to, or an apathy about, equal civil rights for all Americans.

This bill contains provisions directing the Commission on Civil

Rights to complete certain reports. I will be particularly interested in the results of the studies on the crisis confronting young African American males, fair employment law enforcement, and regulatory obstacles facing minority entrepreneurs. In light of all of these things, with my points of hesitancy duty noted, I still support this reauthorization initiative, so that our tomorrows might be brighter than our yesterdays.

Mr. CONYERS. Mr. Speaker, I strongly support the United States Commission on Civil Rights, and support this bill to reauthorize the Commission. However, I am concerned that, while the legislation places deadlines for reporting, the Commission remains underfunded and without the resources necessary to complete its many essential functions.

**[*H1257]**

Congress has consistently appropriated funds to the Commission below the President's authorization request, leaving the Commission year after year with inadequate resources to carry out its directive of investigating charges of citizens deprived of their civil rights, monitoring the enforcement of Federal civil rights laws, and serving as a national clearinghouse for information related to discrimination.

With no specified funding level, the proposed legislation increases the possibility that Congress will continue its pattern of underfunding an important and critical component of this Nation's goal of eliminating discrimination in all its ugly forms.

Moreover, there is no indication that the Majority is prepared to support increased funding for the Commission as requested in the FY 1999 Budget. In fact, in its Estimates and Views on the 1999 Budget, the Majority remains noncommittal on the appropriateness of the President's request of $11 million funding request. However, each year, the Congress continues to underfund the Commission. Last year, the Commission requested $11 million, but was only appropriated $8.75 million.

While increased congressional oversight over the Commission may be warranted, it is irresponsible for the Committee to place additional burdens on the Commission and yet continue to overlook the need for full funding of the Commission. It is an unnecessary and intrusive requirement to have the Commission constantly under the obligation of responding to the many requests made by the Majority, but without any provision for the funds necessary to perform its duties effectively.

The Majority has consistently focused on the problems associated with

enforcement of our civil rights laws and insists that discrimination is no longer the problem it was 30 years ago. However, there is no question that the need for the Commission is greater than ever before. Discrimination continues to be a persistent problem in American society, and the role of the Civil Rights Commission plays a crucial part in fighting it. Instead of continually scrutinizing perceived defects in remedies to discrimination, we need to examine the persistent, invidious, intractable and often disguised nature of race and gender discrimination that is an undeniable fact in America today. This is what the U.S. Commission on Civil Rights was established to do, and Congress has an obligation to provide it with the necessary resources to do so.

Mr. SCOTT. Mr. Speaker, I yield back the balance of my time.

Mr. CANADY of Florida. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. McInnis). The question is on the motion offered by the gentleman from Florida (Mr. Canady) that the House suspend the rules and pass the bill, H.R. 3117, as amended.

The question was taken; and (two-thirds having voted in favor

thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## F. Congressional Remarks on USCCR Reauthorization

### i. 142 Cong Rec S 12080: Reflections on Progress in Civil Rights

FOCUS - 2 of 28 DOCUMENTS

CONGRESSIONAL RECORD -- *SENATE*

Tuesday, October 1, 1996

104th Congress 2nd Session

*142 Cong Rec S 12080*

REFERENCE: Vol. 142 No. 139

TITLE: REFLECTIONS ON PROGRESS IN CIVIL RIGHTS

SPEAKER: Mr. HEFLIN

TEXT: [*S12080]

Mr. President, during my 18 years as a U.S. Senator, legislation of all sorts and in all issue areas has come before this body. Of course there were some issues I came to know best, sometimes because of the nature of my constituency, as was the case with agriculture and technology issues. But there are other topics the Senate addressed during this time which stand

[*S12081]

out in my mind for different reasons, such as judiciary and legal issues and national defense policy. Naturally, since I have a background in the law, I have a greater personal interest here than I do some other areas. But, of all the judicial work the Senate has tackled during my 18 years, its accomplishments in the area of general civil rights strike me as among its most commendable.

Since 1979, congressional action in the field of civil rights has been enormously significant. I think it would be appropriate to highlight some of these issues and events.

Of all the bills relating to civil rights, perhaps first in my mind is the extension of the Voting Rights Act of 1965, which passed during my first term. The fair housing bill, which enforced the provisions of the Fair Housing Act of 1968, also stands out. Another was the Civil Rights Restoration Act of 1991, which ensured that discrimination would not be tolerated in the workplace. But there were others, including the Dr. Martin Luther King, Jr., Holiday and Holiday Commission bills, the Civil Rights Restoration Act of 1987, the reauthorization of the Civil Rights Commission, and the Congress' efforts to save the Legal Services Corporation from the Reagan administration's cuts.

When the Congress considered each of these bills, Members on both sides took positions reflecting very different philosophies. But I believe that the need to reconcile various points of view is the essence of progress in civil rights. For this reason, I am extremely proud of the Senate for working out the necessary accords to pass these bills.

In addition to these specific bills, I am also very proud of the Senate for its advice and consent role in nominations for the Federal Judiciary and executive positions that affected the civil rights movement. During the time since my election, the Senate ensured the continued transition of the South from the 1950's into the next century. Many ills had yet to be addressed, and the Senate confirmed a number of individuals who will fight to resolve these ills and voted down some who might have furthered them.

In 1980, the Senate confirmed the first black district judges in Alabama. The Congress also worked to preserve the legacy of several judges from Alabama who had accomplished much in the area of civil rights, including Justice Hugo Black, Judge Frank Johnson, and Judge Robert Vance. All of these men furthered the cause of racial progress.

When it came to nominations, I would also like to note that the Senate occasionally felt it had to oppose some nominees, because it feared that these individuals might impinge on the enforcement of laws to protect individual rights. These nominees included some Federal judicial nominees as well as executive officials. But in each case, I did my best to remain open-minded until all of the facts were available and the arguments had been made. I might best compare my view of a Senator's role in the confirmation process to that of a judge rather than an advocate.

When it came to some of these bills and nominations, it happened that my own personal perspective and conscience compelled me to vote differently than some of my constituents might have liked. This was particularly true in some instances, including my very painful decision to oppose the special treatment extension of the insignia patent for the Daughters of the American Confederacy, which I will discuss later.

My goal here is to reflect upon some of the major legislation, nominations, and issues which have dominated the Senate's civil rights debate since I have been here.

## Grove City College Civil Rights Restoration Bill

In 1984, I supported the passage of a bill known as Grove City. Formally known as the Civil Rights Restoration Act of 1987, it did not pass until 1988. With this bill, the Congress essentially sought to restore civil rights guaranteed under several major laws restricted by the Supreme Court.

It had a number of opponents among the religious community, especially, since abortion became a major controversy surrounding the bill. In fact, the Congress ultimately needed to override a veto to pass the bill.

Grove City took its name fom a February 28, 1984, Supreme Court decision, Grove City College versus Bell. With this ruling, the Court altered the interpretation of title IX of the Education Amendments of 1972. It found that this law, which prohibited sex discrimination in federally funded institutions, applied only to the particular program or activity directly receiving the funds. Therefore, the entire school was not bound by the antidiscrimination language.

Perhaps the reason the Grove City case was so significant was its potential impact on three other civil rights laws. These laws were the Civil Rights Act, the Age Discrimination Act, and the Rehabilitation Act, all of which used practically the same language. The Court had clearly abridged the Government's rights and abilities to fight discrimination.

According to its stated purpose, the Civil Rights Restoration Act of 1987 sought to restore the "broad, institution-wide application" of Federal antidiscrimination laws. It pertained to each of the four civil rights laws, and like its previous incarnations, it sought to redefine "program or activity."

In 1988, Grove City became Public Law 100-259. But I wasn't necessarily pleased that the fight had been so hard. I had tremendous political pressure on me to oppose it. Immediately after I voted for the override, the vote was referred to as "another nail in my coffin." To put these thoughts in context, I received over 6,000 contacts, including phone calls or letters from constituents who criticized me for supporting the bill.

But I think that it was worth the fight. After its passage, the National Black Law Journal characterized the bill in these terms:

> The passage of S. 557 sends a clear signal: discrimination
>
> is illegal and will be prohibited through broad enforcement
>
> of the Civil Rights Restoration Act of 1987. Consequently,
>
> the enactment of S. 557 closes a major loophole in our civil
>
> rights laws and preserves two decades of hard-won civil
>
> rights for all Americans.

## The Fair Housing Bill

Since my first year as a Senator in 1979, civil rights activists had been pushing the Congress for legislation to amend the 1968 Fair Housing Act, and I supported their efforts. However, a broad bill intended to enforce the provisions of the Fair Housing Act of 1968 did not pass the Congress until 1988.

My efforts in that first Congress included attaching a provision to the bill to allow discrimination complaints to be heard by HUD administrative law judges. A compromise version of this idea appeared in the final 1988 law.

In 1979, several national surveys spurred a House subcommittee to pass a fair housing bill. HUD Secretary Harris testified that it was necessary to improve the 1968 act. The act, she said, "... defined and prohibited discriminatory housing practices but failed to include the enforcement tools necessary to prevent such practices and provide relief to victims of discrimination."

A companion bill appeared before the Senate Judiciary Committee in the summer of the next year, 1980. During its markups, the committee adopted several of my amendments. One would allow HUD discrimination suits to be heard by administrative law judges. These judges would be appointed by a Fair Housing Review Commission authorized by the bill, and the President would appoint the commissioners. The Fair Housing Review Commission would have the authority to review and modify cases. The second of my amendments would limit suits to individuals who actually sought fair housing and who felt they had been victims of discrimination.

By this time, the House had passed its version. Its supporters included the NAACP, the AFL-CIO, the UAW, the League of Women Voters, and the ACLU. President Carter was also among this group, calling the bill "the most critical civil rights legislation before the Congress in years."

It was the House bill which ultimately came to the Senate floor. It had less luck in the Senate than the House, though; certain Senators led a filibuster which killed the bill.

Disagreement on the bill focused on two controversies, whether discrimination should be proven by results or intent, and whether cases should be

[*S12082]

heard by administrative law judges or Federal judges and juries. Civil rights groups supported provisions requiring the results standard of proof; Senate opponents wanted proof of intent. But there did not seem to be any middle ground. With regard to the administrative law judge provisions, Senator DeConcini, offered a compromise to allow jury trials in some cases, but opponents were not receptive. This compromise just raised too many questions.

Unfortunately, we could not compromise that year, and the bill ultimately died in a filibuster.

In 1988, we finally passed a broad bill, H.R. 1158, to address the problem of racial and other discrimination in housing. This bill became Public Law 100-430, to amend the 1968 Fair Housing Act.

The new law authorized HUD to penalize those who discriminated in housing sales and rentals. In addition to prohibitions on discrimination according to race, color, religion, sex, or national origin specified by the 1968 act, the new law included protections for the handicapped and families with young children. According to Congressional Quarterly, this was the first time the Congress protected these latter categories under its laws.

Before the passage of this new law, HUD only possessed the authority to mediate battles. The Justice Department could file suits in the case of discriminatory patterns, and individuals could bring their own suits. But this bill authorized HUD to pursue suits on a victim's behalf.

The final law included a compromise version of my administrative law judge scheme of the 96th Congress. It provided for cases filed by HUD to be heard in front of administrative law judges, if the parties involved chose to do so. Where compromise failed in 1980, however, the 1988 law also provided a second option: if just one of the parties chose it, the case would be heard in a jury trial. The law required the parties to choose within 20 days.

## Voting Rights Extension

In 1982, the Congress passed a law to extend the Voting Rights Act of 1965--H.R. 3112, Public Law 97-205. This new law contained four essential parts. First, it extended section 5 of the act, the major enforcement provision, for 25 years. This section, called the preclearance provision, required 9 States, including my own Alabama, and parts of 13 others to receive approval from the Department of Justice before they could change their election laws. Second, it allowed States that could prove a good voting rights record for the previous 10 years to bail out of the preclearance section after 1984. Beginning that year, States desiring to bail out would have to prove their case before a Federal panel of three judges in Washington, DC. Third, the extension amended the permanent provisions of the 1965 act under section 2 to make it easier to prove violations. Previously, intent to discriminate had to be proven, but under the new law, it would only be necessary to prove that laws had resulted in discrimination. Last, the new law also extended bilingual requirements under the act for 10 years.

But passing this bill was not easy. It had opponents in the Senate and in the administration. In fact, the chairman of the Senate judiciary committee was not friendly to its passage. Compromise was required to save the bill, and I worked behind the scenes, especially with Senator Dole, to find a proposal which would be acceptable to the committee.

Congressional Quarterly has since noted that Senator Dole and I played deciding roles on the Senate judiciary committee. As the bill came out of subcommittee, the publication noted that divisions on the full committee left us "* * * holding the balance of power." Seven members were publicly against the bill, and nine were for it. The committee had 18 members at the time, and a tie of nine to nine would have resulted in a failure to report the bill to the full Senate.

I had an agreement with Senator Dole to work together to forge a compromise which would get committee approval, but not to publicize my behind-the-scenes activity. The reason for my reluctance to receive any credit was due to the fact that this was an unpopular bill with white voters in Alabama, particularly in Mobile.

Notably, Senator Denton, from Alabama, was also a member of the Judiciary Committee, but he opposed the bill. On June 22, the Talladega Daily Home printed an editorial contrasting our positions. "The next time he comes before Alabama voters to be re-elected or retired," it read, "U.S. Senator Howell Heflin may have a problem explaining satisfactorily his vote to extend the so-called

voting rights act for another 25 years." About Denton, who opposed the bill, the editorial wrote he "won't have the same problem."

And on May 6, the Mobile Register printed an editorial which condemned the compromise, writing that it was no compromise at all; instead, the Register called it "probably the most discriminatory legal garbage to ever hit Congress." This editorial called on me to lead a filibuster of the bill for Alabama and particularly Mobile. The Register wrote that, in light of Mobile versus Bolden, the Voting Rights Extension would allow any Federal judge to change local governments' election laws at a whim.

As I mentioned earlier, section 2 of the 1982 extension made it easier to prove violations by requiring proof of results rather than intent. This revision would effectively overturn a 1980 Supreme Court decision, Mobile versus Bolden, upholding the intent requirements.

It was this provision, known as the results test, which first snagged the bill in the Senate committee; the constitution subcommittee refused to incorporate the provision in its March mark-up. President Reagan's Attorney General told the panel that the administration was opposed to the new provisions.

During this markup, the Senate subcommittee extended section 5, the enforcement provisions, for 10 years. But by contrast, the House version of the bill extended section 5 indefinitely. Again, the Attorney General supported the Senate subcommittee's move, testifying that the administration opposed a longer extension.

Notably, in the month following this subcommittee vote, U.S. District Judge Virgil Pittman of Alabama issued an revised opinion on Mobile versus Bolden declaring that Mobile had discriminated against blacks based on the results test. This decision, based on results, bolstered the case of civil rights groups who supported the bill provisions under section 2.

With these revisions, the bill then came to the full Senate committee, whose members began to align for or against the extension. As I mentioned above, nine members supported the House version and seven opposed it; leaving Dole and me in the middle to work out something the whole committee could accept.

On May 4, the committee passed our compromise version of the bill, with only four Senators voting against it. This compromise included changes to section 2's results language to specify its meaning. Taken from a 1973 Supreme Court case, White versus Register, the final version declared that a violation could be proved:

> * * * "if, based on the totality of circumstances, it is
>
> shown that the political processes leading to nomination or
>
> election in the State or political subdivision are not
>
> equally open to participation.

The compromise also extended section 5 for 25 years, rather than 10, as the administration and some Senators wanted, or permanently, as the House wanted.

Still in the way, however, was a filibuster to stop the bill. But the Senate voted it down. In the end, the Senate amended the House bill to align it with its own compromise. The House accepted the Senate amendments on June 23, by unanimous consent.

## The Martin Luther King Federal Holiday

In my first month as a Senator, I became a joint sponsor of a bill to establish a Federal holiday in honor of Dr. Martin Luther King, Jr. That bill, however, did not become law, and it was not until 1983 that we were able to establish the holiday. In 1983, I fully supported its passage-H.R. 3706; Public Law 98-144.

During the 1983 debate, the measure became the victim of a filibuster led by Senator Jesse Helms. According to Congressional Quarterly, Senator Helms objected to King's "action-oriented Marxism," and alleged that King had connections to the communist party. These claims seemed to me to be without merit.

[*S12083]

When the Senate began consideration of the holiday measure, I voted to end the filibuster, and I opposed amendments which would effectively have killed the bill. However, there were two amendments I found to be in line with my own thinking. They were offered by Senators Randolph and Boren to require that the King, Washington, and Columbus holidays be held on the actual dates of the events. In fact, I cosponsored Boren's amendment, and after that amendment failed, I signed onto a bill to serve the same purpose. My reasons for supporting this condition were the cost of a new holiday--the holidays would occasionally fall on Saturdays and Sundays, saving a great deal of expense--and I also wanted to ensure the proper observance of significant historical events. Dr. King's birthday is a significant date in the history of civil rights in this country, and it is most fitting to remember its actual date.

The following year, Congress passed a bill establishing a Martin Luther King Holiday Commission to encourage ceremonies for the first celebration of the holiday--H.R. 5890; Public Law 98-399. The bill mandated a 3-member panel to be funded by donations.

Five years later, I cosponsored a bill to make the Martin Luther King commission permanent. The bill became law--(H.R. 1385, Public Law 101- 30,--and it expanded the commission's role to include the promotion of racial equality and nonviolent social change. Again, when this bill came to the Senate floor, a number of amendments effectively to kill it were offered, and I opposed them all. However, I did support an amendment to bar the Commission from encouraging civil disobedience.

I joined Senator Sarbanes as a sponsor in support of four different bills, S. 322 in the 100th Congress, S. 619 in the 101st Congress, S. 239 in the 102d Congress, and S. 27 in the 103d Congress, to set aside a piece of Federal land in the District of Columbia for the Alpha Phi Alpha Fraternity to build a memorial to Dr. Martin Luther King, Jr. However, these bills did not pass.

## Funding for Historically Black Colleges

I am especially proud of my efforts to authorize funding for the 1890 land grant colleges, including the Tuskegee Institute--now Tuskegee University--and Alabama A&M in my home State of Alabama. Even though these land grant colleges date to the 19th century, they had been largely ignored until the late 1970's. I consider that this fact represents a great waste; certainly these institutions deserve equal treatment, and I believe they are, properly funded, a valuable asset to the Nation in the field of agricultural research.

First, I would like to give a brief history of the African-American, 1890 land-grant colleges. In 1862, the U.S. Congress passed the first Morrill Act, which established the basis for land-grant colleges. These would be established by the States to educate their citizens in agriculture, home economics, and other practical subjects.

However, the Southern States did not provide funding for black colleges under this law, so the Congress passed a second Morrill Act in 1890 specifically to support the African-American institutions. From this history comes the term "1890 Land-Grant Institutions," specifically applied to these historically African-American colleges. However, the agriculture department did not begin earnestly to fund the 1890 land-grant colleges until 1966. That year, Assistant Secretary Dr. George Mehren asked the National Academy of Sciences to suggest an allocation of $283,000 for research at these colleges--under Public Law 89-106.

In 1866, Lincoln University in Missouri became the first such historically black land-grant college." By 1976, there were 16 such universities. Of these 16, there are 2 in Alabama, the Tuskegee University and Alabama A&M University.

The Alabama State Legislature created the Tuskegee Institute in 1881; it was then called The Tuskegee State Normal School for the Training of Negro Teachers. Booker T. Washington became Tuskegee's first President and served until he died in 1915.

During these first years, the State legislature appropriated $3,000 for the institution and authorized it a single teacher. The school remained public until the State legislature granted its board the power of governance in 1893, but Tuskegee Institute continued to receive State funds even though they obtained private status.

In 1897, the legislature also established "The Tuskegee State Experiment Station." George Washington Carver became its director and served until his death in 1943.

In 1899, the U.S. Congress granted the school 25,000 acres, and in 1906, it established the formal extension program. In 1933, Tuskegee became a regionally accredited 4-year college, and in 1943 it opened its graduate schools. Accredited graduate programs now include architecture, chemistry, dietetics, engineering, nursing, and veterinary science. Tuskegee's funding from grants remained nominal until 1972.

Alabama A&M University was founded in 1875 by an ex-slave named William Hooper Councill. Originally, the Huntsville Normal School was on West Clinton Street in Huntsville, the school moved to Normal in 1890. After a decrease in enrollment, the institution was renamed in 1919 the State Agricultural and Mechanical Institute for Negroes and reduced to junior-level training.

During the subsequent years, the school lost its financial support and nearly fell apart, but in 1927 Dr. J.F. Drake became its new president and oversaw expansion of the grounds and the return to 4-year status. It was not until 1962, during the tenure of President Dr. Richard D. Morrison, that the school became a university, with its own graduate school.

With this history of great difficulty as well as great leadership in mind, I hold myself honored to have worked with these institutions. I am particularly proud of efforts to create the Chappie James Preventive Health Center at the Tuskegee Institute, and to pass perhaps the first serious funding authorization for the 1890 black land grant colleges.

During the first summer I was a Senator, I introduced a resolution to authorize the construction of the General Daniel "Chappie" James Memorial Center for Preventive Health at the Tuskegee Institute. When I introduced the bill on the Senate floor, I noted that it was the first preventative health center in the south, maybe the country. I also stated, proudly, that it would become a museum of the general's memorabilia.

Furthermore, I argued that the dedication was especially fitting because General James, the first African-American to rise to a four- star rank in the U.S. Air Force, had been a beneficiary of Tuskegee's programs years before. Tuskegee established the first training program for black pilots, and it was here that General James learned the skills which furthered his career.

Ultimately, we succeeded in passing the Chappie James Center bill as a rider to the 1980 reauthorization of the Higher Education Act of 1965. My amendment authorized $6 million for the center, and required that it be constructed at the Tuskegee Institute.

In May 1981, I introduced a bill to help all of the 1890 land grant colleges. Its language specified that the 1890 land grant colleges receive money for the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings to strengthen their capacity for research in the sciences of food and agriculture. That year, the House passed an identical companion bill unanimously.

As I have said many times, the 1890 schools had not, to that point, had the authorization to receive the benefit of the equipment and facilities they needed to be competitive. They had nothing from Congress to rely on, even though the Congress gave these historically black institutions the same mission as the 1862 schools mandated under the Morrill Act. Therefore, we owed them the means to fulfill that mission, research and development in the field of agriculture for the benefit of the whole country.

As with the Chappie James measure, this authorization passed as a rider, this time to the 1981 farm bill, Public Law 97-98). This amendment authorized $10 million annually to each of the historically black land-grant colleges through 1986--a total of $50 million for each.

## Black Alabamians Become Federal Judges

In the spring of 1979, then-Senator Donald Stewart and I set out to find five U.S. district judges to fill vacancies in the State of Alabama. In order to do this, we formed two committees

[*S12084]

and clarified our intentions in charters for each. We called the first the Federal Judicial Nominating Commission of Alabama, and we called the second the Alabama Women and Minority Group Search Committee.

First, we intended to seek out the most qualified individuals in the State. This was the charge of the first committee. But we also sought to find qualified minorities to fill the slots. This task was the charge of the second panel, which would advise the first.

Through these efforts, two blacks were selected, and President Carter formally nominated them both. These men were U.W. Clemon, for Alabama's northern Federal district, headquartered in Birmingham, and Fred Gray, for the State's middle Federal district, headquartered in Montgomery. U.W. Clemon had become a prominent Alabama State senator, and Fred Gray was a prominent lawyer who had served in many posts. He was perhaps most widely known as Rosa Parks' lawyer.

Although the hearings were not easy, the Senate confirmed U.W. Clemon the next year, and he became the first African-American Federal judge in Alabama. Fred Gray's nomination, however, did not survive the confirmation process. In his place, I recommended Myron Thompson, another black, who was confirmed.

As I said many times during this process, I believe that it is absolutely essential for blacks to serve in Federal courts. In the committee hearings on our recommended nominees, and on the floor after their confirmation, I stated that I believe we must make up for years of injustice in this country. For many long years, blacks were excluded from the Federal judicial nominating process. True equality under the law cannot be achieved under such a system. All Americans must feel they will be treated fairly by the Federal courts, but if certain citizens are precluded from serving on the bench, the courts cannot give the perception of fairness.

## Civil Rights Commission Extension

In 1983, authorization of the Commission on Civil Rights expired, and the Congress set about passing a reauthorization. However, President Reagan intruded, and he tried to restructure the commission for his own purposes.

In late May, Reagan announced he would replace three commissioners on the panel--Mary Frances Berry, Bladina Cardenas Ramirez, and Rabbi Murray Saltzman. According to Congressional Quarterly, the President sought to remove these commissioners because they had criticized his administration's policies. To replace them, the President announced that he would appoint Morris Abram, John Bunzel, and Robert Destro. Some alleged that Reagan selected these replacements because they opposed affirmative action and busing.

President Reagan had clearly challenged the independence of the commission. And the Senate Judiciary Committee responded by putting off the votes on his new nominees. Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, deserves much credit for lobbying against Reagan's position.

In response, Reagan summarily fired the three commissioners he sought to replace. CQ wrote that a White House lobbyist admitted that Reagan fired these individuals because he could not get

the votes for his own nominees. Both Houses of the Congress responded with concurrent resolutions declaring their intent to create a new commission whose members would be appointed by the Senate as well as the President. Dr. Berry and Ms. Ramierez went on to win a suit in the D.C. District Court which granted an injunction against Reagan's firings.

For my own part, I worked to save Mary Berry's seat through a compromise which restructured the commission. During final action, the Senate accepted this compromise amendment, offered by Senator Specter, Public Law 98-183. Under this compromise, Reagan would have four appointees, and the Congress would have four, two for each house. The Commission would therefore have two additional members. The compromise, among other things, also established that the President had to show cause for firings, and authorized funding for the Commission. In response to this last, the House restored funds it had cut from the appropriations bill.

But in the end, civil rights groups were angry to learn that Reagan had backed off on an informal part of the compromise. He had promised, they said, to reappoint two commissioners he had previously opposed, Louise Smith and Jill Ruckelshaus. Reagan, House Majority Leader Michel, and Senate Majority Leader Baker, ultimately refused to put these commissioners on the panel.

Much to my own pleasure, though, the Congress saved Mary Berry's seat. She is now the chairman of the Commission.

## Opposition to Various Nominees Affecting Civil Rights

As I stated before, I feel that the Senate's opposition to a number of nominees was as important as any of its other accomplishments. In the South, some changes for the good occurred, and the Senate's work helped achieve successes in the area of civil rights. It voted down some individuals because of reasonable doubts concerning their impartiality in carrying out the duties of the office for which they were being nominated. These men included William Bradford Reynolds, Judge Robert Bork, Clarence Thomas, Kenneth L. Ryskamp, William C. Lucas, and Jefferson Sessions.

With regard to these nominations, my opposition was based on doubts-- doubts about qualifications and about their impartiality as to racial and civil rights matters. However, I always tried to maintain my sense of objectivity. I always tried to keep an open mind until the end of hearings, because I believe hearings are meaningless if Senators do not examine the facts impartially, if they enter into the proceedings with prejudice. In fact, I have consistently articulated this view in my opening statements: We, as Senators, need to act as judges in the confirmation process. I was often criticized as being indecisive because I withheld my decision until the end of committee consideration. But, if I was to be fair to the nominee, then I had to assume a judge's role.

## William Bradford Reynolds' Nomination

In 1985, President Reagan nominated William Bradford Reynolds to become Associate Attorney General. This position, No. 3 in the Justice Department's hierarchy, carried with it the responsibility for all Federal civil matters.

Previously, Reynolds had been the Assistant Attorney General for the Civil Rights Division, and his record there earned him opponents among the civil rights community. In fact, I based my own decision to oppose Reynolds on what I knew of his record.

Examples of Reynolds' opponents included Benjamin Hooks, executive director of the NAACP; W. Gordon Graham, of the Birmingham city government, who spoke for himself and Mayor Richard Arrington; William L. Taylor, director of the National Center for Policy Review; Judy Goldsmith, president of the National Organization for Women; and Marie Foster from Selma, who was involved in the civil rights movement in that city during the 1960's. These individuals all testified very critically on Reynolds' record, and they all told the committee that he had worked to set back civil rights.

On June 27, 1985, we voted the nomination down in the judiciary committee, and it did not go to the floor. My vote decided the outcome.

On June 30, the Huntsville Times reported that this final meeting and these votes involved "plenty of gavel-banging and shouting as red- faced senators fought bitterly over President Reagan's nomination for a top Justice Department post." I waited until that time to cast my vote, but when I did, I said that I wasn't even certain I felt comfortable with Reynolds in the position in which he was serving at the time. I also said I would find out if the Senate could remove him. In my view, he was deceptive, lacking in forthrightness, evasive, and misleading during his testimony.

## Robert Bork's Nomination

Another individual I ultimately decided to vote against was Judge Robert Bork, nominated to become an Associate Justice on the Supreme Court. I was somewhat disconcerted by comments he had made, particularly with regard to rights guaranteed by the constitution-- rights he said he did not see, but which had been seen by the courts and Congress on numerous occasions. Most important, though, in the end, I did not feel confident I knew what

[*S12085]

Judge Bork would do on the Supreme Court. Since the nomination was for life, I just could not vote for Judge Bork.

President Reagan nominated Judge Bork, who was, at the time, serving on the D.C. Circuit Court of Appeals, in 1987. Bork's advocates argued that he was a conservative judge who tended to defer to legislatures on political matters. But his opponents said that he was an activist, seeking to implement his own agenda. From this dispute, and others, the Senate entered into one of the most contentious confirmation debates of my tenure.

Controversy developed because Bork had, in earlier statements and writings, criticized the constitutionality of a number of Supreme Court decisions affecting individual rights. He had argued for a restrictive interpretation of the 14th amendment with regard to sex. Bork had also criticized decisions which struck down laws because they impinged on individual privacy, a right Bork had argued was neither explicitly nor implicitly provided by the Constitution. The decisions he had cited included the striking of a Connecticut law which banned contraceptives, as well as the Roe versus Wade decision. Regardless of whether or not I agree with Roe versus Wade, I do believe in the right to privacy, and unlike Judge Bork, I do see it in the Constitution.

Notably, Bork had also written that the first amendment applied only to political speech in a 1971 law review article. He followed this with a television statement in 1987 in which he said "other kinds of speech, speech about moral issues, speech about moral values, religion and so forth--all of those things feed into the way we govern ourselves."

During his testimony before the Judiciary Committee, we questioned Bork on his earlier statements and decisions. Several of us argued that Bork was trying to relax his image during these hearings. In fact, Senator Leahy called Bork's seemingly changing beliefs "confirmation conversion." Uncertain of Bork's actual position, I cited Bork's "confirmation protestations" when I stated my final decision.

I voted against the nominee in the Judiciary Committee, and I also voted against him in the full Senate. I gave statements before that committee and on the floor reciting many of the reasons for my opposition to his confirmation. The bottom line was that I just did not known how Bork would treat essential, fundamental rights in his rulings.

The debate over Judge Bork, I might note, was a particularly unpleasant one. The media became so involved and the attempts to politicize the debate from both sides became so acidic, that I felt a particular need to speak on the floor about the potentially damaging effects on the judiciary. But, of course, this type of public intensity has surrounded other nominations since.

A number of mailing and telephone campaigns increased this political nature of the debate. I was even told that my own voice, or an imitation, was used in a telephone solicitation I certainly did not authorize. The spill-over from the Bork nomination lingers to this day, and has affected other nominations since.

## Clarence Thomas' Nomination

In October 1991, I voted against confirmation of Supreme Court Justice Clarence Thomas' nomination. Although I reserved my judgment, as always, until the nominee had been given a chance to be heard, I came out against Clarence Thomas well before I knew of Anita Hill's allegations. I just did not feel that Clarence Thomas was qualified, at that time, to assume a lifetime seat on the Supreme Court.

I do support a moderately conservative court. But I oppose a right- wing court which would embrace a regressive philosophy, which would attempt to rewrite or strike laws written to overcome

years of racism in America. I strongly feared that Clarence Thomas would advocate such right-wing positions.

I also had reservations based on the contradictory nature of Thomas' statements on his fundamental view of the law. He had made a number of statements and written a number of articles before the hearings which the committee called on him to explain. His answers, however, did not satisfy me; they showed a man who had seemingly changed his essential perspective.

At the time, I did not know what the real Clarence Thomas was like or what role he would play on the Supreme Court, if confirmed. In fact, I was very much concerned that Thomas' inconsistencies suggested either intentional deception or a lack of scholarly, considered thought.

One example of my specific reservations was the nominee's apparent shift in his view of natural law. Thomas had criticized the "nihilism of (Oliver Wendell) Holmes," who rejected natural law. However, before the committee, he rejected these earlier statements. He said he made them "in the context of political theory," and described himself as a "part-time political theorist."

Thomas had also criticized the Brown versus Board of Education of Topeka, KS, decision. And when questioned, Thomas said that he had never even discussed Roe versus Wade. I would not have opposed the nominee based on his position on this single case, whatever it may have been, but I found it extremely unlikely that Thomas had never discussed Roe versus Wade, a defining point in the laws of this country. In fact, I was not certain that he was being completely forthcoming, especially considering the polarizing nature of this particular case in Supreme Court confirmations.

I was also deeply concerned about Thomas' advocacy for an activist Supreme Court which would strike down laws because they restrict property rights. Thomas advocated this position in a 1987 speech before the Pacific Research Institute, citing the libertarian Stephen Macedo. I believe, though, that modern constitutional jurisprudence has moved beyond the Lochner era which relied on natural law, and that individual rights are just as important as property rights, perhaps even more so. The Supreme Court has long recognized congressional authority to regulate commerce. As I stated, according to the libertarian view, we would have no laws to guarantee occupational safety and health, to preserve the environment, to protect consumers from unsafe food, to require airline safety, or to establish a minimum wage.

All of these concerns led me to doubts. I simply could not justify voting for a nominee whose positions remained so enigmatic, particularly when he had been nominated to the Supreme Court for life.

The peculiarities surrounding the nomination only increased after that time. In early October, the public became aware that Anita Hill, a former Thomas employee, had alleged that the nominee had made unwanted sexual advances and comments toward her over a number of years. I did not know if Thomas, or Hill, were telling the truth, or if neither was telling the complete truth.

I had not known about these allegations until after I made my initial statement opposing Thomas. The afternoon after my speech, Chairman Biden informed me of the an FBI file which included the charges. I did vote against the committee motion to report the nomination favorably to the floor, which failed in a tie, although I supported sending it to the full Senate without a recommendation. But I had no reason, whatsoever, to change my position; Thomas' record, testimony, and lack of qualifications were reason enough to oppose his confirmation.

## Jefferson Sessions' Nomination

On June 5, 1986, the Senate Judiciary Committee rejected President Reagan's nomination of Jefferson Sessions to become a Federal district judge in Alabama. There were ten Republicans and eight Democrats on the committee. The vote for disapproval of his nomination was 10 to 8, with two Republicans voting against him.

Sessions was, at the time, a U.S. attorney in Alabama. Certain of my colleagues on the committee criticized comments Sessions allegedly made against various civil rights organizations as well as favorable comments made about the Ku Klux Klan. These comments, they argued, showed a "gross insensitivity" to racial matters.

My decision to oppose Sessions was very difficult. Of course, he was from my home State of Alabama. Frankly, I just did not know whether he would be a fair and impartial judge. My statement before the committee recited that since this was a lifetime appointment, we should be very cautious about his fairness and impartiality.

[*S12086]

## William C. Lucas' Nomination

In 1989, I voted against William C. Lucas' nomination to become the Assistant Attorney General in charge of the Civil Rights Division. Mr. Lucas happened to be an African-American, and I do not believe I can state strongly enough my belief in the substantive and symbolic importance of nominating blacks to these positions. However, when I weighed the evidence, I found that Mr. Lucas simply was not qualified to head the Civil Rights Division.

Lucas had worked in the Civil Rights Division in 1963, had been in the FBI, and he had been the Wayne County, MI--which includes Detroit-- sheriff and county executive before President Bush nominated him to this post. But he had only just begun to practice law, and he had never represented a client in court.

Lucas' lack of legal experience showed during the hearings. Lucas downplayed the importance of recent Supreme Court decisions on civil rights laws, commenting "I'm new to the law." And when the Chairman asked Lucas about his view on the recent trend in the Supreme Courts decisions on civil rights laws he said, "I have to answer as a politician because I have not thought about the answer." Further, during the hearings, a number of civil rights activists testified or submitted statements to the effect that Lucas was not qualified to fill the position.

While he emphasized that he did not object to Lucas' views, Ralph G. Neas, executive director of the Leadership Conference on Civil Rights opposed Lucas on his "lack of civil rights and legal

experience." Elaine Jones, deputy director counsel of the NAACP Legal Defense and Education Fund, testified that, although her group initially wished to support Lucas, it found that he did "not have the training and the background to litigate and understand the litigation process." Citing the need for experience in Federal litigation, Drew Days, a professor at Yale Law School and a former holder of the position Lucas would fill, said Lucas' confirmation would "be a frustration of the mission that Congress envisioned when it created that office in 1957." William L. Taylor of the Citizens' Commission on Civil Rights testified for his group, noting his personal belief that Lucas did not meet the standards set by his organization. Arthur L. Johnson, president of the Detroit branch of the NAACP said, "We do not believe that he (Lucas) is suitable for this highly specialized and important assignment where the public interest is so sharply focused, and where the trust of black Americans, and civil rights advocates in particular, should be sought and even enhanced." John H. Buchanan, Jr., of the People for the American Way also argued that Lucas was "inadequately qualified."

On the other hand, some civil rights leaders supported Lucas. Dr. Joe Reed of the Alabama Democratic Conference was one; Reed urged confirmation because, at the time, there had been only one African- American in the post. Another supporter was Alvin Holmes, the senior black member of the Alabama House of Representatives. These men both noted their belief that Lucas' opponents had based their views solely on qualifications. A final example of Lucas' supporters was Father William Cunningham, director of Focus HOPE of Detroit.

Congressional Quarterly reported on certain questions surrounded Lucas' record, including brutality in the Wayne County sheriff's department, a customs dispute, and exaggerations on his resume.

After hearing all of this information, I finally decided to vote against Mr. Lucas. I based my decision in large part on the importance of the position. The head of the Civil Rights Division perhaps has more responsibility than any other single individual for ensuring the security of our civil rights. The individual who assumes this role should be well qualified to deal with the intricacies of the law.

Mr. Lucas, I believed, did not possess sufficient legal experience to undertake the task, and I cast the deciding vote against him. I argued that, although his supporters and Mr. Lucas himself cited his accomplishments in Wayne County, the controversy surrounding them, including brutality in the sheriff's department, indicated to me that his managerial abilities were also questionable. After the committee vote, Ralph Neas who had testified against Lucas, announced a success for civil rights.

## Kenneth L. Ryskamp's Nomination

I cast the deciding vote against Kenneth L. Ryskamp of Florida, whom President Bush had nominated to the 11th Circuit Court of Appeals. This circuit covers Florida, Georgia, and my home State of Alabama. President Bush actually nominated Ryskamp twice. The first time was in 1990, and the Judiciary Committee tabled the nomination that year.

Ryskamp had been criticized by People for the American Way, a civil liberties group which found that he had ruled against more civil rights plaintiffs than any other judge nationwide. He had also belonged to a country club which had an implicit policy of discrimination against African-Americans and Jews.

Also haunting Ryskamp was a specific case in which a number of African-Americans in West Palm Beach, including those who had not been found guilty of any crime, filed a complaint because they had been attacked by city police dogs. Although the jury had found the city, individual police participants, and the former police chief guilty of civil rights violations, Ryskamp threw out the conviction against the city and the police chief. He said: "It might not be inappropriate to carry around a few scars to remind you of your wrongdoing in the past, assuming the person has done wrong."

Nine Latin American members of the Florida State Legislature wrote a letter to express their belief that Ryskamp had "* * * demonstrated insufficient sensitivity to ethnic minorities and other groups who have traditionally been the objects of discrimination." In my opposition to Ryskamp, I weighed this information, and I concluded that, if the representatives of such a large population felt they would not receive justice, Ryskamp could not dispense it. With regard to this last point, I believe it is important to note that these lawmakers were Republicans, and they had no partisan motivation.

## Creation of the 11th Circuit

As a past chairman and now ranking member of the Judiciary subcommittee which oversees court reform and judicial administration, one of my great interests as a Senator has been that of improving and streamlining judicial procedure and process. In June of 1980, I introduced a bill to divide the Fifth Circuit Court of Appeals into two courts. On October 1, the Congress passed, by voice vote in both chambers, the House version of the bill to divide the circuit. This bill became Public Law 96-452.

At the time, this circuit included Texas, Louisiana, Mississippi, Georgia, Florida, and Alabama; this legislation broke off Georgia, Florida and Alabama to create the new 11th Circuit, and the others remained as the new fifth circuit.

The split had been considered several times before, but that year, I introduced the legislation in response to a request made by the court's judges. This request came to me as a formal petition, signed by all twenty-four judges sitting on the court. Among these were Frank Johnson, Joseph Hatchett, the first African-American on the court, and Bob Vance. Judge Johnson became the court's spokesman for the split during hearings on the matter in the House of Representatives.

The main purpose of the bill would be to promote judicial efficiency. Individual judges in the circuit were burdened by an excessively large caseload. Further, the entire court had accrued the largest "en banc" caseload in U.S. judicial history.

In the past, civil rights groups had opposed the split because, given the location of the circuit, it heard the most important civil rights cases in the country. Therefore, these groups did not want to see a more conservative court created.

In fact, during the House subcommittee hearings, Judge Johnson testified that he had been opposed to earlier incarnations of the proposal. He said, "* * * the basis for my opposition was a firm belief that the proposal would have a substantial adverse effect on the disposition of cases in the fifth circuit that involved civil and constitutional rights." After a careful evaluation of the judges who would go to the different circuits, Judge Johnson changed

[*S12087]

his position to become the spokesman for the split.

According to the circuit judges' proposal, this split was to be dissimilar to the earlier suggestions in two ways. It would not reduce the cases filed, nor would it create courts whose views differed from the present court's. With respect to these modifications, the petition read that the division could be accomplished "* * * without any significant philosophical consequences within either of the proposed circuits."

As a Congressman from Mississippi, Jon Hinson, pointed out during the hearings, the new courts would reflect a balance in their philosophy, at least as measured by the President who appointed the judges. Nine of the 14 judges on the fifth circuit were to be Carter's appointees, as were 7 of 12 on the 11th circuit.

Other former opponents, including Judge Hatchett and U.W. Clemon, submitted letters to the subcommittee explaining why they had changed their views. Judge Hatchett noted that the new Fifth Circuit Court would have no African-American judges, a matter which had caused many objections. However, he wrote that this matter could be addressed later. "While I understand the apprehension caused some persons by two 'new courts,' I do not believe their fears are well founded," he wrote. "The two courts that will emerge from this division will probably be no different from the existing fifth circuit." Judge U.W. Clemon wrote that, although he had opposed the 4 to 2 split, this new proposal "will not adversely impact on civil rights." Clemon added that it would, in fact, speed the 2-year lag time in the filing of civil rights cases.

## The Frank Johnson Courthouse

During my first year as a Senator, I strongly supported the nomination of Judge Frank M. Johnson, Jr., to become a U.S. circuit judge in what was then the Fifth U.S. Circuit Court of Appeals. Judge Johnson stands out as one of the most outstanding jurists of our times.

I believe that Judge Johnson has done more in the field of civil rights than almost any other single judge. He wrote or took part in numerous historical decisions including those in matters of desegregation, voter registration, and reapportionment. He was also variously involved in cases

which established new standards in mental health programs and prisoners' rights. Notably, in 1978, Johnson became the first Federal district judge to find that an African-American educational institution discriminated against whites in its hiring practices.

At the time, I predicted that the Senate would not have the pleasure of confirming a better candidate for circuit judge in many years. To Judge Johnson's credit, I believe that my prediction has come true.

To further honor this man, whose fairness and judicial temperament I deeply respect, at the suggestion of Dr. Joe Reed, I introduced a bill in the summer of 1991 to name the Federal courthouse in Montgomery the Frank M. Johnson U.S. Courthouse. This bill became Public Law 102-261.

I felt that it was most appropriate to name this particular courthouse after Judge Johnson because it was there he began his career as a Federal judge. Judge Johnson's courtroom truly reflected the terms rule of law and equal protection of the law. And despite threats on his life, Judge Johnson at all times courageously upheld equal justice under the law.

I can only hope that this courthouse will continue to symbolize Judge Johnson's work, and to be a temple of justice.

## The Hugo Black Courthouse

In 1983, I introduced a resolution to designate February 27, 1986, Hugo LaFayette Black Day. This day marked the 100th anniversary of the late Supreme Court Justice's birth. The resolution became public law 98-69.

Justice Black was born in Clay County, Alabama, and he was graduated with honors from the University of AL Law School. He was a practicing lawyer, a prosecuting attorney, and a police court judge in Birmingham, and he distinguished himself in all of these positions. He went on to become a Senator from Alabama, where, among other things, he sponsored the first minimum wage bill. In 1937, Hugo Black became Franklin D. Roosevelt's first nominee to the Supreme Court. Justice Black served there through six Presidents and five Chief Justices.

I know that Justice Black was a great champion of civil rights who saw the law as a tool to improve everyone's condition. He had a strong work ethic and a delightful sense of humor, and he had a great sympathy for victims of injustice. Chief Justice Burger once said, "He loved this Court as an institution, and contributed mightily to its work, to its strength, and to its future. He revered the Constitution: * * * But above all he believed in the people."

In 1987, I also worked to pass a bill to name the new Federal courthouse in Birmingham for Hugo Black. This bill became Public Law 100-160. Former Congressman Ben Erdreich from my State of Alabama sponsored the bill in the House.

## The Bob Vance Courthouse

In January 1990, I was deeply saddened by the murder of my very close friend, Bob Vance, who served on the 11th Circuit Court of Appeals. Judge Vance was murdered by a mail bomb which also seriously injured his wife, Helen Rainey Vance.

I spoke on the floor to honor his memory, and his great accomplishments in civil rights; sadly, it seemed clear that his efforts to further the rights of all citizens motivated his murderer. I wanted, as best I could, to state, unequivocally, that he did not die in vain, that his work to ensure racial equality did not die with him.

I wanted, very much, for everyone to know that Bob Vance was responsible, as much as any individual, for stopping racially motivated bombings like the one which killed him. We need more men like Judge Vance--men who have the courage to follow the moral imperatives of their conscience.

A few months later, I worked to pass a bill which renamed the courthouse at 1800 5th Avenue in Birmingham the "Robert S. Vance Federal Building and United States Courthouse"--Public Law 101-304. I hope that this stands as a testament to this great man's work to fight racism, and as a symbol of the work we have done as well as what we have yet to do.

## The Daughters of the American Confederacy Insignia Patent

Earlier, I alluded to the United Daughters of the Confederacy insignia debate. Although I firmly believe that it was the right thing to do, I made one of my most difficult and unpopular decisions as a Senator in 1993 when I voted against the special treatment extension of the design patent for this group. My personal family history is profoundly connected to the Confederacy. My maternal grandfather was a signer of the Ordinance of Secession by which Alabama seceded from the Union, and my paternal grandfather was a surgeon in the Confederate Army. I also had several close relatives who were killed while serving in the Confederate Army. All of these family members were convinced that their cause was right. Honor was their chief motivation at the time, and these men believed that their honorable course was to defend their cause and homeland. I felt a tremendous amount of conflict as I thought about the issue.

Senator Carol Moseley-Braun, our only black Senator, eloquently argued against extending the patent. Her words made me consider, carefully, whether we in the Congress truly needed to extend a special recognition for this symbol of the past. After some considerable thought, I decided that honor is still a chief motivation. However, although I revered my ancestors, honor had taken a different meaning after one hundred and twenty-eight years, and I believe I did the right thing just as they did.

In May 1993, Senator Moseley-Braun had convinced the Judiciary Committee to delete provisions of a bill which extended the design patent concerning the Daughters of the American Confederacy. She argued that she did not oppose the group's freedom to use whatever symbol it should chose, but instead she questioned the need for the Congress to endorse a Confederate symbol

with the special protection when an extension could be obtained through the Office of Patents and Trademarks in the normal routine manner.

However, the matter came before the full Senate two months later as a Helms amendment to a bill we were considering at the time.

Senator Moseley-Braun again opposed the amendment, and she made some compelling arguments on the

[*S12088]

floor. She objected to a special Congressional honor since it would, she said, conversely dishonor her own ancestors. She explained:

> * * * the United Daughters of the Confederacy have every right to honor their ancestors and to choose the Confederate flag as their symbol if they like. However, those of us whose ancestors fought on a different side in the Civil War, or who were held, frankly, as human chattel under the Confederate flag, are duty bound to honor our ancestors as well by asking whether such recognition by the U.S. Senate is appropriate.

I listened to this argument and considered it carefully. With a divided mind, I ultimately agreed with Senator Moseley-Braun. In its later report, Congressional Quarterly called my decision "Perhaps the turning point in the debate," which, until that time, had gone against Senator Moseley-Braun.

Our colleague from New Jersey, Senator Bradley referred to my decision in his engaging memoir "Time Present, Time Past". He wrote, "Heflin, who through his actions as a lawyer and judge had long championed racial justice, rose and said, 'I have many connections through my family to the Daughters of the Confederacy organization and the Children of the Confederacy, but the Senator from Illinois * * * is a descendant of those that suffered the ills of slavery.' I have a legislative director whose great-great grandfather was a slave. I said to my legislative director, 'Well if I vote with Senator Moseley-Braun, my mother, grandmother, and other ancestors will turn over in their graves.' He said, 'Well, likewise, my ancestors will turn over in their graves (if you vote against it).' "

I do not believe, nor did I believe then, that the Daughters of the American Confederacy is inherently racist nor that it takes part in racist activities. But I do believe that the U.S. Congress should not provide a special honor, as Senator Moseley-Braun argued, for a symbol that offends a

large part of its constituency. In America, we have a long history of racial inequality to correct, and I believe much remains to be done. I also believe that, for substantive efforts to succeed, we must work symbolically as well.

On July 23, the Huntsville News, the Selma Times-Journal, the Dothan Eagle, the Mobile Register, the Birmingham Post-Herald, the Opelika- Auburn News, the Montgomery Advertiser, and the Gadsden Times wrote that I had "turned (my) back on (my) Confederate forefathers."

On July 24, the Gadsden Times, the Dothan Eagle, the Decatur Daily, the Talladega Daily Home, and the Columbus Ledger-Enquirer reported that "Southern preservationalists portrayed Sen. Howell Heflin as a Yankee-sympathizing turncoat Friday for his dramatic floor speech and vote against an insignia bearing a Confederate flag." The Tuscaloosa News also reported these objections, and it wrote that Frances Logan, president of the Tuscaloosa UDC, called Richard Shelby a traitor because he also joined Senator Moseley-Braun. The Montgomery Advertiser also reported objections from members of the UDC and the Sons of Confederate Veterans.

The UDC in my own home town of Tuscumbia was notably upset with the Senate. The President of this chapter expressed her disappointment with me for not stating that the war, and the symbol, were not over slavery. A former president of the Alabama United Sons of the Confederacy, said: "What is going to be interesting is when (Heflin) tries to run for re- election". * * * "He's got about as much chance as the proverbial snowball when he's got these women mad at him."

On July 24, the Mobile Register editorialized that Senator Shelby and I were "swept into political correctness along with * * * other colleagues * * * to reject a patent for an insignia of the United Daughters of the Confederacy." The editorial further asserted that rejection of the patent extension would do nothing to prevent racism.

But some articles and editorials were more favorable. On July 23, the Mobile Press printed an article in which it chose to quote a number of my colleagues who supported my decision, and the Anniston Star printed an editorial supporting my decision. This editorial denied that I did my ancestors a dishonor; in fact, the editorial was so complimentary as to call my decision courageous. On the 24th, the Andalusia Star-News gave me the same compliment.

The same day, the Birmingham News/Post Herald editorialized that the patent issue would be resolved only "To the satisfaction of neither side." The editorial noted that Senator Shelby's and my votes "didn't help them with the average white voter." But it added a great compliment to us both by suggesting that integrity played a part.

## The Civil Rights Restoration Act

In 1990, the Congress passed a bill to restore interpretations of employment civil rights laws recently limited by the Supreme Court. But President Bush vetoed the bill in the fall, and we failed to override the veto in the Senate.

This bill was generally called a civil rights restoration bill because its sponsors sought to overturn a number of Supreme Court decisions issued in the late 1980's. Congress felt the Court had

become too conservative, depending too heavily on the exact wording of the law and sacrificing some of its meaning. With respect to the civil rights cases, particularly, I think the bill's authors felt that the Court had restricted the laws too much, and I agreed with them.

A filibuster met this bill when it came to the floor in July. At this time, a number of Senators offered amendments to the bill. I co- sponsored one offered by Senator Ford to apply the provisions of the bill to the Senate. The Senate passed this rider, and it voted down another to allow for special procedures for itself. Among all of the amendments, however, I think the most important was Senator Kennedy's amendment to eliminate the requirement of quotas as a remedy in the bill.

However, despite the Kennedy amendment, President Bush vetoed the bill based on an objection to quotas. "It is neither fair nor sensible to give the employers of our country a difficult choice between using quotas and seeking a clarification of the law through costly and very risky litigation," he argued in his veto message.

I was disappointed by the veto and puzzled by the President's reasoning. The bill, I said, included language explicitly stating that "nothing in the amendments made by this Act shall be construed to require or encourage an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex or national origin." I judged that the bill would only have restored employment practices to the standard before the Supreme Court restrictions.

The next year, the Congress and President Bush compromised on a new version of the bill, which the President declared free of quotas. This bill became Public Law 102-166.

Congressional Quarterly suggested that Bush moved, in large part, because his civil rights record had earned him enemies in the African- American community. This publication also wrote that the President had other political reasons to support the bill. Not least among these were the Thomas hearings and the GOP candidacy of former Klansman David Duke for Governor of Louisiana. But to suppose that he was motivated only by his own gain strikes me as cynical; I believe that the President deserves credit for supporting and signing this Act.

Ultimately, we worked out a compromise which passed as the Senate bill. It modified title VII of the 1964 Civil Rights Act to establish specific compensatory and punitive damages capped according to the size of the business in cases of intentional bias, and it allowed for complainants to seek jury trials under this section. The compromise also rewrote statutes to overturn, effectively, nine Supreme Court rulings. In answer to Wards Cove, the new law returned the burden of proof in discrimination cases to the employer, although it left the definition of business necessity to the courts. It prohibited racial harassment after hiring, contrary to Patterson versus McLean Credit Union. It overturned Martin versus Wilks by setting specific statutory guidelines for third party challenges to consent decrees in affirmative action cases. Against Price Waterhouse versus Hopkins, it specifically disallowed consideration of race, color, religion, sex or national origin no matter what circumstances otherwise surrounded the

[*S12089]

hiring. The new law also allowed a period of time to pass after seniority systems are implemented in order to examine their effects before discrimination suits need to be filed. This statute was a response to Lorance v. AT&T. It further amended Title VII to allow for those winning suits against the U.S. government to recover interest on delays, contrary to Library of Congress v. Shaw. In order

to reverse Crawford Fitting Company versus J.T. Gibbons Inc. and West Virginia University Hospitals v. Casey, it also modified this section to allow for recovery of the costs in hiring experts. Last, it allowed American workers abroad to sue U.S. companies for discrimination, against the Supreme Court's EEOC versus Arabian American Oil Co decision.

Congressional Quarterly wrote that the language to reverse the Wards Cove decision--with reference to indirect discrimination, called disparate impact--was vague, and left much undecided. This vagueness was a function of the compromise we reached with President Bush.

I was disappointed with the law's failure to apply the same statutes to Senate employment as in the private sector. The bill, however, did include measures to prevent employment discrimination which held Senators personally liable.

This measure represented a key step in the elimination of discrimination, an end I believe the people of America and Alabama were--and are--working very hard to attain.

## The Legal Services Corporation

During the 1980's, Congress saved the Legal Services Corporation, which provided legal assistance to the poor in civil litigation. This action followed a series of attacks leveled by President Reagan; each year he tried to abolish the corporation, and during that time, he also tried to restrict its activities and reconstitute its board. Since the Senate would not support his nominations, he made many of them in recess. Ultimately, after the Congress pushed funding through each year, Reagan gave in and requested money for the LSC in his last budget request.

I fought very hard to continue the Legals Services Corporation because I believe it is essential to true equality of justice. Given increasing fees and costs, the American system of justice continues to become more difficult for the poor to access. And this unfortunate reality has had a disproportionate impact on minorities. Its continuation represented a great victory for the Congress and the people.

## Church Arson

In June 1996, I strongly supported S. 1890, a bill to increase Federal protection against arson and other destruction of places of religious worship. For the past couple of years, black churches had been burned under suspicious circumstances and with alarming frequency, and a national response was strongly needed.

To those of us who remember the violence and fires of the early civil rights movement and who applaud the progress which has been made in terms of race relations, these latest images in the early hours before dawn were profoundly disturbing.

I supported this bill and other efforts to stop these kinds of hate crimes, bring their perpetrators to justice, and encourage compliance with the law. I also saw this as an opportunity to ask ourselves if we can do more to advance the causes of equal rights and racial harmony. I also called for the authorization of a transfer of funds to be used to implement the provisions of this act at the State and local levels of government.

## Designation of the Route of the Freedom March from Selma to Montgomery as a National Trail

In 1990, I worked with Senator Kerry to introduce a bill to require a study to include the Route of Freedom, from Selma to Montgomery, in the national trails system. I introduced another in 1995 to officially include the Route of Freedom in the system.

Although a conference report is still pending, the provisions to designate the Route of Freedom a national trail passed the Congress in the House's Presidio bill, a larger parks bill.

## Sanctions Against South Africa

Beginning in the summer of 1985, I voted for the imposition of sanctions on South Africa, and I supported them until the end of apartheid. Although these sanctions remained somewhat unpopular in my home State, I believed that they were the right thing to do. Events since then have shown that sanctions did help bring about an end to apartheid and create a more stable society.

## African-American Staff Members

Over the years, I have had many black staff members. In fact, I believe that I have had more African-Americans working for me than other Senators. My legislative director, office manager, mobile field coordinator, and others are black.

As I have said, I believe that inclusion of blacks in government helps overcome symbolic and substantive obstacles to equality. However, it just happened that these staffers applied, and they were best qualified to do the job. This is the way it should be in all cases.

## Black Federal Marshals in Birmingham

In 1993, I worked with black political leaders in Alabama to recommend two African-American U.S. Marshals in my home State. These men, Robert Moore and Bill Edwards, were very well qualified for the positions--perhaps even overqualified when compared with the usual candidates for this position.

Robert Moore had recently retired from the Secret Service, where he had served as a special agent for 8 years--the last four in senior status.

On July 15, 1993, Senator Shelby and I recommended Bill Edwards for the northern district of Alabama. Mr. Edwards had been with the U.S. Marshal's office in Birmingham since 1970, and at the time of our letter, he was a senior criminal investigator. He was also in his last year of law school at the Birmingham School of Law.

That year, Senator Shelby and I also recommended Florence Mangum Cauthen to the middle district on August 6, and she became the first female U.S. Marshal in Alabama. Among her other accomplishments, Ms. Cauthen had taught law at Jones Law School.

## Title III of the Higher Education Act

I sought to have a number of Alabama colleges funded through title III of the Higher Education Act. I supported a proposal to separate the general college at Tuskegee University from its renowned School of Veterinary Medicine so that both institutions could receive the benefit of title III. Normally, schools such as Tuskegee, which are considered developing institutions, receive only one grant under this law.

Additionally, I saw that junior colleges were included in the title III developing institutions programs. Over the years, I have worked closely with the Department of Education to see that junior colleges and historically black institutions receive title III funds. These resources have been extremely beneficial.

In the early 1980's Alabama Christian College--now Faulkner University--was turned down for a title III Developing Institutions Grant by the Education Department. Fortunately, we were able to prevail upon the Department and the White House. On a late Sunday afternoon, officials of the department reassembled outside readers and determined that Alabama Christian College's title III application should be granted. A few years later, this school received a challenge grant in the amount of $1,000,000 to assist in its development efforts.

## Conclusion

As I reflect upon my Senate activities in connection with civil rights, a number of thoughts come to mind, including those surrounding my decision to run for the U.S. Senate.

Senator John Sparkman was in his late seventies, and many of his friends did not think he would be a candidate for reelection in 1978. Then-Governor George Wallace had announced his intention

to run for the Senate and was already conducting a tough campaign against Senator Sparkman. I had always been a strong supporter of Senator Sparkman. I was told by friends of his to look at the possibility of running in the event that Senator Sparkman decided to retire.

I had polls conducted pitting my candidacy against that of George Wallace. The initial polls showed that if I were to run, Wallace would be far ahead of me. As I recall, the numbers first polled showed that Wallace would get about 45 percent and that I would get only about 17 percent. But my pollster, Peter Hart, indicated that there was a large amount of negative feeling in the

[*S12090]

State toward Wallace at that time and expressed his opinion that I could win such a race. One of the motivating reasons that caused me to give serious consideration to the race was that I felt that Alabama should be represented by a senator who believed in the improvement of race relations and progress in the area of civil rights.

I met with Senator Sparkman in Washington, and he told me about how he had entered his first race for Congress. Archie Carmichael was then the Congressman from Senator Sparkman's district, and Sparkman had been his campaign manager when he was elected. Congressman Carmichael did not enjoy being a Congressman, only serving two terms. He called John Sparkman to Washington and told him that he ought to get ready to run for his congressional seat; that he had not made up his mind yet, but that there was a strong possibility that he would not offer himself for reelection and that Mr. Sparkman should get ready to run in the event he did not seek his congressional seat again. He said to me, "I am telling you that story because I think you ought to get ready to run for the Senate against Wallace." I thanked him and told him I would follow his advice. I also relayed to him that Congressman Archie Carmichael was my wife's grandfather. Sparkman said he knew that and that was one of the reasons he wanted to tell me the story.

A few weeks later, Senator Sparkman announced that he would not be a candidate for reelection, and I announced the next day that I would be a candidate for John Sparkman's seat in the U.S. Senate.

My race against George Wallace was heated for several months. And then, while speaking to the Alabama League of Municipalities Convention in Mobile, he announced his withdrawal from the Senate race, giving no reason for his decision. In advance of his announcement, I was told of several polls that showed I had pulled ahead of Wallace, including a poll conducted by the Wallace campaign itself.

I attracted other opponents, but won in a run-off race against Congressman Walter Flowers by a 2-to-1 margin.

As I think back over the reasons I entered the race for the U.S. Senate, certainly the issue of racial progress in Alabama was a motivating factor, and I was fearful that if George Wallace was in the Senate, it could deter needed changes in the civil rights laws.

In 1982, he ran again successfully for Governor. His last administration was one in which race relations were far more harmonious than they had been in his previous terms in office, with Wallace appointing a number of blacks to key positions in his administration. He publicly stated that his segregation stand had been wrong. At a recent meeting of southern black Democratic leaders in

Atlanta, Dr. Joe Reed, head of the Alabama Democratic Conference, said I was the first U.S. Senator from Alabama who believed in civil rights and who took positive steps to advance the individual rights of all persons.

Mr. President, despite all the progress in race relations and civil rights over the years, there is still much to be done. Our work remains unfinished, as the church burnings illustrate. When I reflect on these horrifying arsons and the death of Judge Bob Vance just a few years ago, I am again reminded of just how much remains to be done.

Perhaps it is unrealistic to believe that we can ever have a truly color-blind society. As long as fear, ignorance, and emotion guide some peoples' thinking, there will be prejudice and bigotry. But we can look at the great progress we have made--just in the 18 years since I came to the Senate--and say that we are doing better.

Members might differ on their approaches to civil rights issues. These approaches will take on different forms based on the region of the country we come from, our personal philosophical beliefs, and our political parties. My approach has been to do as much as possible in the public arena to advance opportunity and justice. At times, this has meant working behind the scenes to secure progressive judicial nominations, to craft compromise legislation that could pass and be signed into law, and working with both sides of an issue to cool passions and promote harmony. At other times, it has meant taking strong symbolic stands aimed at education and putting the past behind us, such as the case with the United Daughters of the Confederacy issue.

Regardless of what approach we take as leaders, it is our duty to work in every way we possibly can to see that each and every American citizen enjoys the same liberty, freedom, and equality of opportunity as all others. The fulfillment of the promise of the Constitution demands that we always remain diligent in fulfilling this responsibility.

## ii. 138 Cong Rec H 7198: U.S. Commission on Civil Rights Authorization Act of 1992

FOCUS - 3 of 28 DOCUMENTS

Congressional Record -- House

Monday, August 3, 1992

102nd Cong. 2nd Sess.

*138 Cong Rec H 7198*

REFERENCE: Vol. 138 No. 112

TITLE: U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT OF 1992

SPEAKER: Mr. EDWARDS of California; Mr. HYDE

TEXT: [*H7198] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5399) to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations.

The Clerk read as follows:

H.R. 5399

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Authorization Act of 1992".

SEC. 2. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended by adding at the end the following: "There are authorized to be appropriated to carry out this Act $7,422,014 for fiscal year 1993, and an additional $850,000 for fiscal year 1993 to relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. Edwards] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. Hyde] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, H.R. 5399 authorizes an appropriation for the U.S. Commission on Civil Rights for fiscal year 1993.

By voice vote, the Committee on the Judiciary rejected the Commission's request for increased funding of 31 percent and staff of nearly 21 percent over the current fiscal year.

H.R. 5399 maintains the agency at 1992 levels with the requested 4.7 percent COLA increase and 4 percent for inflation. It also authorizes $850,000 to relocate the headquarters office, and prohibits using any funds to create additional regional offices.

Last year we debated legislation extending the life of the Commission. The clear bipartisan message from that debate was that the agency must clearly demonstrate it is back in the factfinding business if it expects to be reauthorized at the end of 3 years. I believe the committee's action this year makes clear that it is premature to expand its operations until that record of fact-finding is clearly demonstrated.

I am pleased the Commission is taking seriously the committee's concerns about its fact-finding mandate. Already this year, it has:

Released a well publicized report on the "Civil Rights Issues Facing Asian Americans in the 1990's";

Conducted hearings in Washington, DC and Chicago, IL, around its new theme of race, poverty, and violence; and

It plans to issue three additional reports.

In fiscal year 1993, the agency plans to issue three reports and conduct a hearing in Los Angeles on racial and ethnic tensions.

Mr. Speaker, the sums authorized by H.R. 5399 will enable the Commission to carry out its statutory fact-finding mission. I urge support of this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, the bill authorizes an appropriation of $7,422,014 [*H7199] and an additional $850,000 for fiscal year 1993 to relocate the headquarters office of the Commission. The building in which the Commission is currently located is considered unsafe and so they will be forced to move to another location in Washington.

This authorization is less than what the administration requested and the Commission originally requested, but the subcommittee members, on a bipartisan basis, feel that it is sufficient for the Commission to operate effectively.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Mazzoli). The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and pass the bill, H.R. 5399.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## iii. 137 Cong Rec H 9416: U.S. Commission on Civil Rights Reauthorization Act of 1991

FOCUS - 5 of 28 DOCUMENTS

Congressional Record -- House

Wednesday, November 6, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 9416*

REFERENCE: Vol. 137 No. 163

TITLE: U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

TEXT: [*H9416] The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and concurring in the Senate amendment to the bill, H.R. 3350.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and concur in the Senate amendment to H.R. 3350, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were -- yeas 420, nays 7, not voting 6, as follows:

(See Roll No. 378 in the ROLL segment.)

[*H9417] Mr. HERGER changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

[Roll No. 378]

YEAS -- 420

| | | |
|---|---|---|
| Abercrombie | Ackerman | Alexander |
| Allard | Anderson | Andrews (ME) |
| Andrews (NJ) | Andrews (TX) | Annunzio |
| Anthony | Applegate | Archer |
| Aspin | Atkins | AuCoin |
| Bacchus | Baker | Ballenger |
| Barnard | Barrett | Barton |
| Bateman | Beilenson | Bennett |
| Bentley | Bereuter | Berman |
| Bevill | Bilbray | Bilirakis |
| Bliley | Boehlert | Boehner |
| Bonior | Borski | Boucher |
| Boxer | Brewster | Brooks |
| Broomfield | Browder | Brown |
| Bruce | Bryant | Bunning |
| Burton | Bustamante | Byron |
| Callahan | Camp | Campbell (CA) |
| Campbell (CO) | Cardin | Carper |
| Carr | Chandler | Chapman |
| Clay | Clement | Clinger |
| Coble | Coleman (MO) | Coleman (TX) |
| Collins (IL) | Collins (MI) | Combest |
| Condit | Conyers | Cooper |
| Costello | Coughlin | Cox (CA) |
| Cox (IL) | Coyne | Cramer |
| Cunningham | Dannemeyer | Darden |
| Davis | de la Garza | DeFazio |
| DeLauro | Dellums | Derrick |
| Dickinson | Dicks | Dingell |
| Dixon | Donnelly | Dooley |
| Doolittle | Dorgan (ND) | Dornan (CA) |
| Downey | Dreier | Duncan |
| Durbin | Dwyer | Early |
| Eckart | Edwards (CA) | Edwards (OK) |
| Edwards (TX) | Emerson | Engel |

English
Erdreich
Espy
Evans
Ewing
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Franks (CT)
Frost
Gallegly
Gallo
Gaydos
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Goss
Gradison
Grandy
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hefley
Hefner
Henry
Hertel
Hoagland
Hobson
Hochbrueckner
Holloway
Horn
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
James
Jefferson
Jenkins
Johnson (CT)
Johnson (SD)
Johnson (TX)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Kleczka
Klug
Kolbe
Kolter
Kopetski
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
LaRocco
Laughlin
Leach
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowery (CA)
Lowey (NY)
Luken
Machtley
Manton
Markey
Marlenee
Martin
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers

| | | |
|---|---|---|
| Mfume | Michel | Miller (CA) |
| Miller (OH) | Miller (WA) | Mineta |
| Mink | Moakley | Molinari |
| Mollohan | Montgomery | Moody |
| Moorhead | Moran | Morella |
| Morrison | Mrazek | Murphy |
| Murtha | Myers | Nagle |
| Natcher | Neal (MA) | Neal (NC) |
| Nichols | Nowak | Nussle |
| Oakar | Oberstar | Obey |
| Olin | Olver | Ortiz |
| Orton | Owens (NY) | Owens (UT) |
| Oxley | Packard | Pallone |
| Panetta | Parker | Pastor |
| Patterson | Paxon | Payne (NJ) |
| Payne (VA) | Pease | Pelosi |
| Penny | Perkins | Peterson (FL) |
| Peterson (MN) | Petri | Pickett |
| Pickle | Porter | Poshard |
| Price | Pursell | Quillen |
| Rahall | Ramstad | Rangel |
| Ravenel | Ray | Reed |
| Regula | Rhodes | Richardson |
| Ridge | Riggs | Rinaldo |
| Ritter | Roberts | Roe |
| Roemer | Rogers | Rohrabacher |
| Ros-Lehtinen | Rose | Rostenkowski |
| Roth | Roukema | Rowland |
| Roybal | Russo | Sabo |
| Sanders | Santorum | Sarpalius |
| Savage | Sawyer | Saxton |
| Schaefer | Scheuer | Schiff |
| Schroeder | Schulze | Schumer |
| Serrano | Sharp | Shaw |
| Shays | Shuster | Sikorski |
| Sisisky | Skaggs | Skeen |
| Skelton | Slattery | Slaughter (NY) |
| Smith (FL) | Smith (IA) | Smith (NJ) |
| Smith (OR) | Smith (TX) | Snowe |
| Solarz | Solomon | Spence |
| Spratt | Staggers | Stallings |
| Stark | Stearns | Stenholm |
| Stokes | Studds | Sundquist |
| Swett | Swift | Synar |
| Tallon | Tanner | Tauzin |
| Taylor (MS) | Taylor (NC) | Thomas (CA) |

| | | |
|---|---|---|
| Thomas (GA) | Thomas (WY) | Thornton |
| Torres | Torricelli | Towns |
| Traficant | Traxler | Unsoeld |
| Upton | Valentine | Vander Jagt |
| Vento | Visclosky | Volkmer |
| Vucanovich | Walker | Walsh |
| Washington | Waters | Waxman |
| Weber | Weiss | Weldon |
| Wheat | Whitten | Williams |
| Wilson | Wise | Wolf |
| Wolpe | Wyden | Wylie |
| Yates | Yatron | Young (AK) |
| Young (FL) | Zeliff | Zimmer |

NAYS -- 7

| | | |
|---|---|---|
| Armey | Crane | DeLay |
| Hancock | Herger | Sensenbrenner |
| Stump | | |

NOT VOTING -- 6

| | | |
|---|---|---|
| Dymally | Hayes (LA) | Hopkins |
| Martinez | Sangmeister | Slaughter (VA) |

## iv. 137 Cong Rec H 9161: U.S. Commission on Civil Rights Reauthorization Act of 1991

FOCUS - 6 of 28 DOCUMENTS

Congressional Record -- House

Tuesday, November 5, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 9161*

REFERENCE: Vol. 137 No. 162

TITLE: U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

SPEAKER: Mr. BROOKS; Mr. EDWARDS of California; Mr. HYDE; Mr. SENSENBRENNER

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the House on the floor.

[*H9161] Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill H.R. 3350.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end of the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act, $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994".

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. Brooks] will be recognized for 20 minutes, and the gentleman from Wisconsin [Mr. Sensenbrenner] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself 4 minutes.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I rise in support of H.R. 3350, the Civil Rights Commission Reauthorization Act of 1991. This legislation was adopted under suspension of the rules on October 1, and has returned in a form recently enacted by the Senate, after negotiations between the two bodies.

As amended, H.R. 3350 reauthorizes the U.S. Commission on Civil Rights for 3 years, through 1994, with a fiscal year 1992 authorization of $7,159,000 -- slightly above the fiscal year 1991 appropriation and the same amount that was appropriated by the House for 1992. An additional $1.2 million is provided to pay for the agency's move to new quarters later in this fiscal year, as required by the General Services Administration.

While this authorization does not require the agency to cut programs or staff, it prevents the Commission from expanding without first fulfilling its statutory mission to investigate discrimination. In addition, the legislation now requires the Commission to submit at least one report each year detailing Federal civil rights enforcement efforts. These provisions oblige the agency to allocate its resources wisely and, I trust, will secure the Commission's rerun to its factfinding mission.

Under this legislation, the agency must come back to this body next year, and the year after, for a new authorization. This requirement -- which was a common practice prior to the 1983 reauthorization -- will ensure closer congressional oversight of the Commission's activities.

Once again, I wish to compliment the gentleman from California, [Mr. Edwards], the chairman of the Civil and Constitutional Rights Subcomittee, for his excellent work on this important piece of legislation. I also commend the ranking minority member of the subcommittee, Mr. Hyde, for his

leadership on this issue. Mr. Speaker, this legislation keeps alive the U.S. Commission on Civil Rights, as well as our determination that it can turn itself around before the next reauthorization. I urge the Members' support.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, the time has come to put the Civil Rights Commission out of its misery. The gentleman from Texas [Mr. Brooks], I think, hit the nail on the head when he has demonstrated very eloquently that this Commission has been nonproductive during the last 22-month authorization.

The bickering and squabbling that marked previous commissions has continued, and it seems to me that the only thing that this Commission has been able to do is to set forth a case for its reauthorization and the authorization of more of the taxpayers' scarce dollars to keep it in business until the end of fiscal year 1994.

I do not think that this Congress should buy the notion that if a commission does a bad job it ought to be reauthorized and it ought to be given a raise, and yet that is exactly what this particular piece of legislation does.

When this bill left the House on September 30, it contained an authorization of $6 million. Now, the authorization is $7.159 million for each of the next 3 years, and in addition, there is $1.2 million for relocation expenses of the Commission's central office as well as the eastern regional office. That includes money for new carpeting, money for new furnishings, money for furniture, and money for a new phone system.

When is this going to end? Certainly, if there ever was a case of putting a commission out of business, now is the time given the nonproductivity during the last 22-month authorization period.

When the Commission was reauthorized 2 years ago, it was put on strict probation. And if any criminal spent his probationary period like this Commission spent their probationary period, the probation officer would [*H9162] revoke the probation, and that would be the end of the matter.

Now, at the full committee markup on September 24, the chairman of the subcommittee, the gentleman from California [Mr. Edwards], pointed out during the last 2 years the Commission has issued only one report and has had no hearings and consultations. The Commission is attempting to take credit for the work of its State advisory committees, not the Commission itself, but the advisory committees that function in each of the 50 States, for a lot of its work product, and, frankly, that is shameful. Because that, in my opinion, is taking credit for work which they have not done at all.

I would hope that the Congress today would look very closely at this Commission to reject the motion to suspend the rules to increase the authorization that was approved by the House from the $6 million a year for 2 years to $7.159 million for the next 3 years as well as all of their office relocation expenses and then maybe we can start over from scratch and set up a commission that is really relevant that all of us are proud of.

The chairman of the committee, the gentleman from Texas [Mr. Brooks], is correct in saying that this Commission is in an elliptical orbit. It has been at the low end of the orbit for a long period of time. The question is whether we continue paying for it to be at the low end of the orbit.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I am happy to yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, it is on the end of the orbit; you know, it goes pretty close at times, when it goes like this, but when it is at the far end, that is where they have been.

What I was going to ask about really to my friend, the gentleman from Wisconsin [Mr. Sensenbrenner], is: Does the gentleman not think we might talk to the Committee on Appropriations and maybe, in their wisdom, they would cut that extra $1.1 million out of their appropriation and maybe the $1.2 million and let them take their new housing out of their $6 million? And they could just cut back a little bit like everybody else is having to do in my district.

Mr. SENSENBRENNER. Reclaiming my time, when I get back to my office, I will have a joint letter to the Committee on Appropriations typed up, and I hope that the gentleman would honor me by signing the letter, because I think it would have much more clout then.

Mr. BROOKS. If the gentleman will yield further, I think I will maybe just talk to them, but we will look at it.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Edwards].

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, I thank the chairman and the gentleman from Wisconsin [Mr. Sensenbrenner] for their remarks, because I think they are very valuable.

This is an important subject. The Civil Rights Commission has a long and honorable history. It was established by President Eisenhower in the Civil Rights Act of 1957. And for many years it was the eyes and ears of the Nation in identifying problems in the enforcement of the various civil rights laws and reporting their findings to the Congress and to the President and they did a splendid job. It was a necessary institution that earned its appropriation.

Now, this year, the Civil Rights Commission asked for a 10-year authorization and a $10 million appropriation for fiscal year 1992. The subcommittee held a hearing on this authorization request and after examining the Commission's work, we decided that $10 million was entirely too much. We concluded a 2-year extension and a $6 million authorization for fiscal year 1992 would give the Commission sufficient time and resources to carry out this statutory mandate. We believed they should postpone adding four new regional offices.

We thought that they ought to earn those new offices with good work. They showed us that changes have been made. There is a new Chairman of the Commission, Mr. Fletcher, who has a distinguished history in civil rights, and a new staff director. They claim they are new brooms, and

that they are going to sweep the place out and go back to the factfinding and reporting mandated by their charter.

The Senate wanted to give them more money than the $6 million that the House authorized. We worked with the Senate, and finally came upon the figure of $7.159 million -- the same amount designated by the Congress in the State, Justice appropriations bill.

This amount allows them to maintain their staff and their work at current levels. They are on probation, Mr. Speaker. They have been warned, but the subcommittee felt that it was not in the best interests of the civil rights movement or the great civil rights laws that have meant so much to this country and have been the envy of the world. We are, after all, a society of diverse people and different cultures, colors, and religions.

We have difficult problems ahead. We need institutions like a Civil Rights Commission to help tackle these problems. But we need a Civil Rights Commission that is back in the factfinding business.

So they are on probation. They are going to have enough money to continue at present levels.

We are going to monitor them very carefully over the 3 years. We are not giving them the carte blanche they wanted.

MR. SPEAKER, I SUPPORT THE SENATE AMENDMENT TO H.R. 3350, THE U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991.

THE AMENDMENT EXTENDS THE COMMISSION'S LIFE FOR A REASONABLE PERIOD, PROVIDES FOR AN ANNUAL AUTHORIZATION OF APPROPRIATIONS, DIRECTS AT LEAST ONE ANNUAL REPORT MONITORING FEDERAL CIVIL RIGHTS ENFORCEMENT, AND SUBSTITUTES, "CHAIRPERSON" FOR "CHAIRMAN" THROUGHOUT THE STATUTE.

MR. SPEAKER, THE CURRENT REAUTHORIZATION DEBATE IS NOT ABOUT WHETHER THE NATION NEEDS A FEDERAL CIVIL RIGHTS FACTFINDING AGENCY. WE DO. THE DEBATE IS WHETHER THE U.S. COMMISSION ON CIVIL RIGHTS IS THE RIGHT AGENCY FOR THAT JOB.

FOR 25 YEARS, THE BIPARTISAN, INDEPENDENT COMMISSION WAS THE PREMIER FEDERAL CIVIL RIGHTS FACTFINDING AGENCY. IT ABANDONED THAT MISSION IN THE 1980'S, BECOMING NOTHING MORE THAN A PLATFORM FOR DIVISIVE RHETORIC BY COMMISSION MEMBERS.

DURING THE 1989 REAUTHORIZATION, CONGRESS TOOK A GAMBLE THAT WITH NEW MEMBERSHIP, LEADERSHIP, AND MANAGEMENT, IT WOULD GET BACK TO ITS MANDATE. TO THE COMMISSION'S CREDIT, THE DIVISIVE RHETORIC IS GONE AND FISCAL MANAGEMENT HAS IMPROVED. BUT VIRTUALLY NO FACTFINDING HAS BEEN DONE IN THE PAST 2 YEARS -- NO HEARINGS, NO CONSULTATIONS AND ONLY ONE REPORT -- ON WORK ALREADY IN PROGRESS BEFORE THE 1989 REAUTHORIZATION.

CONGRESS HAS REJECTED THE COMMISSION'S APPEAL FOR A 10-YEAR REAUTHORIZATION AND UNLIMITED FUNDS.

H.R. 3350, AS PASSED BY THE HOUSE, CONTINUES THE AGENCY FOR 2 YEARS AND PROVIDES $6 MILLION IN APPROPRIATIONS FOR EACH FISCAL YEAR.

THE SENATE'S BILL EXTENDS THE COMMISSION'S LIFE FOR 4 YEARS, AUTHORIZES UNLIMITED FUNDS FOR EACH FISCAL YEAR, DIRECTS PUBLICATION OF AT LEAST ONE ANNUAL REPORT ON THE STATUS OF CIVIL RIGHTS IN THE UNITED STATES, AND SUBSTITUTES "CHAIR" FOR "CHAIRMAN" WHEREVER IT APPEARS IN THE STATUTE.

TODAY, WE CONSIDER THE COMPROMISE AMENDMENT NEGOTIATED WITH SENATE SPONSORS WHICH I SUPPORT. THIS COMPROMISE EXTENDS THE COMMISSION'S LIFE FOR 3 YEARS, PROVIDES $7,159,000 IN APPROPRIATIONS FOR FISCAL YEAR 1992 -- FUTURE AUTHORIZATIONS OF APPROPRIATIONS WILL BE REQUIRED ANNUALLY -- DIRECTS PUBLICATION OF AT LEAST ONE ANNUAL REPORT MONITORING FEDERAL CIVIL RIGHTS ENFORCEMENT, AND SUBSTITUTES "CHAIRPERSON" FOR "CHAIRMAN" WHEREVER IT APPEARS IN THE UNDERLYING STATUTE.

THE SENATE AMENDMENT'S REAUTHORIZATION AND APPROPRIATION PROVISIONS GIVE THE COMMISSION SUFFICIENT TIME AND RESOURCES TO DEMONSTRATE IT IS AGAIN MEETING ITS FACTFINDING MANDATE. A REVIEW OF AGENCY SUBMISSIONS AND COMMISSIONER MEETINGS OVER THE PAST 2 YEARS SHOWS IT HAS BEEN GROPING TO FIND A FOCUS FOR THIS FACTFINDING MANDATE. THE CONGRESS BELIEVES A PART OF THAT MANDATE SHOULD INCLUDE RESUMPTION OF THE ENFORCEMENT SERIES. FLEXIBILITY AND DISCRETION IS GIVEN TO THE COMMISSION TO ELECT THE TOPIC AND AGENCY OR DEPARTMENTS [*H9163] FOR REVIEW, BUT CONGRESS IS GUARANTEED AT LEAST ONE ANNUAL REPORT WHICH MONITORS EXECUTIVE BRANCH ENFORCEMENT OF FEDERAL CIVIL RIGHTS LAWS.

MR. SPEAKER, ALTHOUGH IT IS NOT OBLIGATED TO ISSUE MORE THAN ONE MONITORING REPORT ANNUALLY, THE COMMISSION WOULD BE WISE TO DO MORE, THAT IS, TO HOLD HEARINGS, CONDUCT CONSULTATIONS, AND ISSUES REPORTS. AFTER ABANDONING ITS FACTFINDING RESPONSIBILITIES FOR ALMOST A DECADE, THE COMMISSION MUST AFFIRMATIVELY CONVINCE THE 103D CONGRESS THAT IT SHOULD BE REAUTHORIZED BEYOND FISCAL YEAR 1994. IF IT FAILS TO DO SO, THEN IT SHOULD BE PREPARED FOR THAT CONGRESS TO FIND SOME OTHER ENTITY TO CARRY OUT THIS FUNCTION.

THE COMMISSION PLANNED TO AUGMENT ITS REGIONAL OFFICE STRUCTURE BY ADDING FOUR MORE OFFICES IN FISCAL YEAR 1992. IT WILL NOT BE ABLE TO DO SO UNDER THIS APPROPRIATION. THE $7,159,000 AUTHORIZED FOR THE CURRENT FISCAL YEAR MAINTAINS THE AGENCY AT CURRENT LEVELS -- NO CUTS IN STAFF AND PROGRAMS WILL RESULT -- BUT PLANS TO ESTABLISH ADDITIONAL OFFICES MUST BE POSTPONED UNTIL CONGRESS IS CONVINCED THE COMMISSION IS BACK IN BUSINESS.

THE COMMITTEE ON THE JUDICIARY WILL ALSO BE REQUIRED TO AUTHORIZE THE COMMISSION'S REQUEST FOR AUTHORIZATION OF APPROPRIATIONS FOR

FISCAL YEARS 1993 AND 1994. THIS REPRESENTS RESUMPTION OF CONGRESSIONAL REVIEW AND ACTION OF THE COMMISSION'S REQUEST FOR APPROPRIATIONS BY BOTH THE AUTHORIZATION AND APPROPRIATION COMMITTEES TO INSURE THAT THE HOUSE AND SENATE HAVE ENACTED AN AUTHORIZATION OF APPROPRIATIONS AT THE APPROPRIATE LEVEL.

ANNUAL REVIEWS OF THIS TYPE WERE A COMMON PRACTICE IN PREVIOUS AUTHORIZING LEGISLATION. IT ASSURES ANNUAL CONGRESSIONAL OVERSIGHT OF THE AGENCY'S BUDGET, PROGRAMS, AND ACCOMPLISHMENTS. IF THE COMMISSION CAN DEMONSTRATE IT IS MEETING ITS STATUTORY MANDATE, THE CONGRESS MAY DECIDE IT IS TIME TO EXPAND THE AGENCY'S RESOURCES AND PROGRAMS.

MR. SPEAKER, THIS IS A GOOD COMPROMISE, AND I HOPE THAT THE COMMISSION APPRECIATES IT IS TIME TO PRODUCE A TANGIBLE RECORD OF CIVIL RIGHTS FACTFINDING OVER THE NEXT 3 YEARS. I URGE YOU TO ADOPT H.R. 3350 AS AMENDED.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. Hyde].

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, the Senate amendment to H.R. 3350 is evidence of the bipartisan consensus that the work of the Civil Rights Commission is needed. The compromise reauthorizes the Commission for 3 years, provides for an increased appropriation of $7,159,000 for the current fiscal year and requires the Commission to publish at least one annual report monitoring Federal civil rights enforcement.

Mr. Speaker, I think it is clear there exists serious political controversy over this Commission, so I think we do need to stress that the issue before us is really not one of ideology, but management.

During the last 22-month reauthorization period, the Commission has held one briefing and no hearings. Although there have been 17 reports issued by the State advisory committees, the Commission itself issued no reports within its statutory mandate and on the whole has produced very little in the way of performing its factfinding duties.

The Commission has, however, done a great deal to rehabilitate its reputation and to reestablish its network of regional offices which had been closed during cutbacks in the 1980's. It is struggling to reestablish its factfinding focus and carefully utilize its resources. We support this effort.

This Nation needs a bipartisan, objective, and informed voice on the sensitive issues of civil rights. The majority in Congress still believe that the U.S. Commission on Civil Rights is the best entity to perform this function and so I urge my colleagues to accept the Senate amendment to H.R. 3350.

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to make the point that we are reauthorizing the Commission until 1994, but we are just authorizing money for 1 year. So they will have to come back next year and get an authorization for any money that they are going to get. The same would be for the year after

that. if they do not do better than they have been doing, they are going to be wasting a lot of their time as well as our money.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, one of the features in the Senate amendment that we are debating today amends the current law that says at present the Commission cannot function without authorization. In other words, it is a mandatory sunset and it requires the Congress to reauthorize the Commission in order for it to continue in existence.

Under the Senate amendment, the Commission can stay on forever without affirmative legislation, under continuing resolutions.

I believe that takes away the club of this Congress over the Commission to start spending the taxpayers' money wisely and to start producing something for the over $7 million that is being authorized in this bill.

Now, with the Senate amendment, should it be enacted into law, it will mean that this Commission can keep on rolling like Old Man River, not functioning at all unless and until the Congress passes an affirmative law abolishing the Commission. I think that is wrong.

I think given the fact that none of the speakers today who have the most familiarity with this Commission have given it a glowing endorsement, every one of the speakers on the floor has said that the Commission has got its problems, every one of them says that the Commission is on probation.

I disagree with my friend, the gentleman from Texas [Mr. Brooks] that the broom is new, because Mr. Fletcher has been the chairman of the Commission for 1 1/2 years, and we have not seen this Commission turn around since he took over the chairmanship.

The time I believe has come to reject concurring in the Senate amendment.

Now, that does not necessarily kill the Commission. That means we can set up a conference with the other body and perhaps change this feature that allows the Commission to continue so that we can have them on a short chain should we decide to reauthorize it. Failing that, I believe the Senate amendment should be rejected and we can continue with the procedure.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I want to say to my friend that it is my conviction that this reauthorizes the Commission only until 1994. The language in our bill has every intent of doing just that and that only.

But I would say that we are certainly going to take a very hard look at it again next year. I anticipate that both the gentleman and I will be on that same committee evaluating their efforts with that new, old, or used broom that they have.

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentleman from Texas, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Espy). The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3350.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

## v. 137 Cong Rec S 15299: U.S. Commission on Civil Rights Reauthorization Act, Simon (and Hatch) Amendment No. 1276

FOCUS - 7 of 28 DOCUMENTS

Congressional Record -- Senate

Monday, October 28, 1991

102nd Cong. 1st Sess.

*137 Cong Rec S 15299*

REFERENCE: Vol. 137 No. 156

TITLE: UNITED STATES COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT; SIMON (AND HATCH) AMENDMENT NO. 1276

TEXT: [*S15299] Mr. MITCHELL (for Mr. Simon, for himself and Mr. Hatch) proposed an amendment to the bill (H.R. 3350) to extend the U.S. Commission in Civil Rights, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end the following: "The Commission shall, in addition to any other

reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

[*S15300] SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994".

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d (f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

## vi. 137 Cong Rec S 15306: U.S. Commission on Civil Rights Extension Act

FOCUS - 8 of 28 DOCUMENTS

Congressional Record -- Senate

Monday, October 28, 1991

102nd Cong. 1st Sess.

*137 Cong Rec S 15306*

REFERENCE: Vol. 137 No. 156

TITLE: U.S. COMMISSION ON CIVIL RIGHTS EXTENSION ACT

SPEAKER: Mr. HATCH; Mr. LOTT; Mr. MITCHELL; Mr. SIMON

TEXT: [*S15306] Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 272, H.R. 3350, a bill to extend the U.S. Civil Rights Commission.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3350) to extend the United States Commission on Civil Rights.

[*S15307] The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1276

Mr. MITCHELL. Mr. President, on behalf of Senators Simon and Hatch, I send a substitute amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Mr. Mitchell], for Mr. Simon (for himself and Mr. Hatch), proposes an amendment numbered 1276.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991."

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994."

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d (f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson."

Mr. SIMON. Mr. President, I am pleased to announce that we have reached a bipartisan agreement on reauthorization of the U.S. Commission on Civil Rights.

This legislation is the product of a Constitution Subcommittee hearing held over the summer at which civil rights organizations and the Commission testified and numerous discussions among Democrats and Republicans, House and Senate committees, the Commission and other interested parties.

The substitute to the House bill that Senator Hatch and I offer today extends the life of the Commission on Civil Rights for 3 years until the end of fiscal year 1994. This represents a genuine compromise. The original bill I introduced sought a 4-year reauthorization. The administration sought 10 years and the Commission sought 25 years. The House-passed bill would have reauthorized the Commission for 2 years. Each of us has had to come up or come down from our original positions.

There were numerous reforms that I and others sought for the Commission that are not contained in the legislation we have agreed to. But that is the essence of compromise and we will all have significant opportunities to work with the Commission to enable it to respond to the civil rights challenges in the 1990's and shape the national agenda.

For the fiscal year we are now in, fiscal year 1992, the Commission is authorized for $7.159 million of appropriations. This is the same amount that is contained in the Commerce-Justice-State appropriations bill.

We have also authorized $1.2 million in supplemental appropriations which will enable the Commission to relocate its headquarters to Capitol Hill. Because of extensive fire safety deficiencies at the Commission's current downtown location, the General Services Administration will not renew the Commission's lease and requires it to incur expenses this fiscal year in order to be able to move in November 1992.

Mr. President, I ask unanimous consent that a letter from the General Services Administration to the U.S. Commission on Civil Rights be printed in the Record, along with a seven-paragraph summary enumerating Commission moving and related expenses.

There being no objection, the material was ordered to be printed in the Record, as follows:

General Services Administration, National Capital Region,
Washington, DC, April 22, 1991.

Ms. Betty Edmiston,
Chief, Administrative Services, U.S. Commission on Civil Rights, Washington, DC.

Dear Ms. Edmiston: I would like to update you on the status of space occupied by the U.S. Commission on Civil Rights (CCR) in Thomas Circle South, 1121 Vermont Avenue, NW, Washington, DC.

The lease for CCR's existing space expires November 22, 1992. This building at 1121 Vermont Avenue, NW, has extensive fire safety deficiencies. Due to the severity of these deficiencies, the General Services Administration (GSA) will not renew the lease. CCR will need to vacate the space

at the expiration of the lease in November, 1992. The safety of Federal employees is a high priority for GSA; therefore, CCR will move to a building offering quality safety for its tenants.

We will continue communications for the development of your relocation space. If you have any questions regarding CCR's space, please do not hesitate to contact myself or Ms. Susan Shircliff of my staff on 708-9000.

Sincerely,
Ron Kendall,
Chief,
Assignment and Acquisition Branch.

- - - - - - - - - - - - - - - - - - -

ADDITIONAL INFORMATION RELATED TO THE RELOCATION OF COMMISSION OFFICES IN WASHINGTON, DC

The Commission's relocation of its headquarters and Eastern Regional Division is being planned for October-November 1992, to coincide with the completion of the Judiciary Office Building and the expiration of our lease at 1121 Vermont Avenue, N.W. The General Services Administration has advised that extensive fire safety deficiencies exist in our current location and that they will not extend our current lease.

In order to adequately prepare for our relocation which will occur very early in FY 93, contractual arrangements must be finalized and funds obligated in FY 92. Because leadtimes on acquisitions may take as long as four months from the time an order is placed until delivery, it is imperative that FY 92 funds be provided for relocation-related expenses.

We anticipate the largest relocation expense to be a one-time space build-out cost for drywall installation, carpeting, lighting, electrical and telephone outlets, locks, etc. At the current time, the General Services Administration is conducting discussions with the construction contractor for the Judiciary Office Building on build-out costs. While exact costs are not yet known, GSA informally advised that the original ballpark estimate was approximately $600,000.

In relocating the Commission's headquarters and Eastern Regional Division to the Judiciary Office Building, the General Services Administration reviewed space requirements for the Commission and made a final determination on the exact quantity of square feet to be allotted us. As a result, offices are being downsized and new, smaller size furniture is needed to ensure office efficiency and good space utilization. Exclusive of minor furniture purchases, the Commission has not acquired new furniture in many years. The acquisition of new furniture is required in FY 92 to ensure delivery, inspection, placement, and installation prior to our move in October-November. While the acquisition for furniture has not yet been initiated, we anticipate a FY 92 expense of approximately $500,000.

The Commission is currently utilizing an older telephone system which is no longer in production. Telecommunications consultants for the Judiciary Office Building have advised that our old, non-electronic system is not compatible with the telecommunications system wiring for the new building. The acquisition of a new telephone system, with an expense of approximately $170,000, will need to be finalized in FY 92 to ensure delivery, installation and the completion of testing prior to our relocation in October-November 1992.

In addition to the above, the Commission anticipates numerous other smaller dollar expenses related to the relocation. For example, new stationary and envelopes will have to be printed, computers and computer wiring will have to be de-installed and reinstalled, etc., prior to our move in October-November 1992. As with the other items noted above, acquisitions must be finalized in FY 92 to ensure timely delivery coinciding with our move.

Should funding not be made available in FY 92 for relocation-related expenses, the Commission would be forced to continue to reside in a location which has been determined unsafe for Federal employees. Attached for your information is a copy of the letter from GSA advising of the severity of the problems with our current space and informing us of our forced relocation.

[*S15308] Mr. SIMON. Mr. President, in fiscal years 1993 and 1994, no set authorization is specified in the Simon/Hatch amendment. Under current law, when the Commission is not authorized appropriations, it is required to terminate its operation. Under the Simon/Hatch amendment, this will not be the case. In the absence of further legislation that enacts a different level of appropriations for fiscal years 1993 or 1994, the current authorization of $7.159 million will remain in effect for each of those fiscal years.

While we certainly expect to be closely reviewing the Commission's operations and authorization, a failure on Congress' part to agree to subsequent authorizations will not require the Commission to shut down prior to September 30, 1994.

Mr. President, let me be clear about what we are doing today. As chairman of the Senate Subcommittee on the Constitution, I believe that the Commission has taken some positive steps forward since its last reauthorization. I am aware, however, that the Commission has not been restored to its previous and historic status as the widely regarded conscience of the Nation on civil rights matters. Under its new Chairman, Arthur Fletcher, the Commission has begun to work more in unison than it has in the past.

Many individuals on both sides of the aisle raised serious concerns about the lack of written work product from the Commission in the past few years. On the positive side, the Commission has issued reports on the Indian Civil Rights Act, economic status of black women, bigotry and violence on American college campuses, and other subjects. Its State advisory committees have also been active. The Commission has provided me a list of its accomplishments and I ask unanimous consent that it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. COMMISSION ON CIVIL RIGHTS ACCOMPLISHMENTS DURING CURRENT AUTHORIZATION

REPORTS

The Indian Civil Rights Act Report.

The Economic Status of Black Women: An Exploratory Investigation.

Report of the U.S. Commission on Civil Rights on the Civil Rights Act of 1990.

Bigotry and Violence on American College Campuses.

Intimidation and Violence: Racial and Religious Bigotry in America.

STATE ADVISORY COMMITTEE REPORTS

Efforts to Promote Housing Integration in Atrium Village and the South Suburbs (IL).

Bigotry and Violence on Missouri's College Campuses (MO).

Bigotry and Violence on Nebraska's College Campuses (NE).

Reporting and Bias-Related Incidents in Pennsylvania (PA).

Implementing the 1988 Fair Housing Amendments Act (PA).

Bigotry and Violence in Rhode Island (RI).

Early Childhood Education Issues in Texas; Implications for Civil Rights (TX).

Housing and Utility Rate Issues on Reservations/North Dakota (ND).

Rights of the Hearing Impaired (IL).

Ageism Affecting the Hiring and Employment of Older Workers (VT).

Police-Community Relations in Tampa An Update (FL).

Recent Decisions of the Supreme Court and the Proposed Civil Rights Act of 1990 and 1991 (DE & PA).

Fair and Open Environment? Bigotry and Violence on College Campuses in California (CA).

In-School Segregation in North Carolina Public Schools (NC).

Reversing Political Powerlessness for Black Voters in South Carolina (SC).

Community Perspectives on the Massachusetts Civil Rights Act (MA).

Implementation in Arizona of the Immigration Reform and Control Act (AZ).

OTHER

Statement on the Elimination of Race Baiting in Election Campaigns.

Changing Perspectives on Civil Rights -- Nashville, TN.

Changing Perspectives on Civil Rights -- Los Angeles, CA.

Statement on Minority Scholarship.

Mr. SIMON. Mr. President, in light of the reasonable concerns about the Commission's reporting on Federal civil rights enforcement, the new bill requires the Commission to issue at least one report annually to the President and Congress on some aspect of this issue. We are mindful of the Commission's resources and do not expect this report to be exhaustive on every aspect of every Federal agency's civil rights enforcement role.

Nonetheless, the Commission's Chairman has testified that monitoring Federal civil rights enforcement is the Commission's No. 1 priority. Therefore, the bill expects annual reporting on this subject as a core responsibility of the Commission. If the Commission is successful in its mission, I expect its appropriations to grow in the future and the resources it can devote to both the substance of this report and additional reports will correspondingly grow.

Finally, Mr. President, let me say that the work of the Commission has never been as important as it is today. The Commission, since its inception in 1957, has taken this Nation and often led the Congress and the President through traumatic and challenging times on civil rights. As the fights for

equality for African-Americans and women have been won, the Nation as a whole has gained. Clearly, the national effort in these areas is not over and the Commission's vigorous return to the effort is essential.

As the Nation becomes more diverse with growing populations of Hispanic and Asian-Americans, with more and more barriers to the workplace, schools, and accommodations for the disabled individuals dropping, and a greater understanding, even in recent weeks, of gender discrimination and sex harassment, additional challenges for true equality are ahead of us. We need a strong and independent U.S. Commission and Civil Rights to help guide the Nation as it has done before. The Commission ought to be looking at the conditions for these populations and taking the lead. It has started to do that in some areas but it needs to do more.

The Constitution Subcommittee will continue to monitor the progress on civil rights in the Nation and the Commission's role in that progress. This reauthorization bill enables the Commission to take an active role in civil rights over the next 3 years.

Mr. HATCH. Mr. President, I am pleased to have played a part in working out this compromise measure to preserve the U.S. Commission on Civil Rights. While it is far from a perfect measure, I believe it is worthy of the Senate's support. I want to commend Senator Paul Simon and his staff, Susan Kaplan, John Trasvina, and Brant Lee, for their efforts in preserving the Commission.

I earlier sponsored legislation extending the Commission for 10 years. I believed such an extension would stop the Commission from being a political football, always worrying about whether it will continue in existence for more than 1 or 2 years. Senator Simon favored a 4-year extension, also a reasonable extension. Unfortunately, the House of Representatives passed legislation extending the Commission's life for only 2 years, and slashing its already slender funding.

I am disappointed that we could only agree on a 3-year extension, with an authorization for funding for 1 year. It may be that there are those who wish to keep the Commission on a short leash, until it is brought to heel and reflect a monolithically liberal outlook, as it had prior to 1984.

I have also reluctantly agreed that the Commission be required to file an annual report on some aspect of Federal civil rights enforcement. While I have no quarrel with the requirement that the Commission file an annual report, I believe it infringes upon the independence of the Commission to dictate the subject of those reports. With its limited resources, the Commission will not have the flexibility to address new civil rights issues or more timely issues because of this specific mandate. It is ironic that some of those who purportedly were concerned about the Commission's independence in the 1980's now wish to infringe on that independence.

In order to resolve the dispute on these matters, I have agreed to support this compromise. But if the Commission continues to be used as a political football by those who wish it to toe a particular line, and if the Commission performs as if it has to toe that line in order to survive rather than reach independent findings, then I believe its future will remain in doubt for the foreseeable future.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing [*S15309] to the (No. 1276) in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3350), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## vii. 137 Cong Rec H 7088: Civil Rights Commission Reauthorization Act of 1991

FOCUS - 9 of 28 DOCUMENTS

Congressional Record -- House

Monday, September 30, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 7088*

REFERENCE: Vol. 137 No. 137

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1991

SPEAKER: Mr. BROOKS; Mr. EDWARDS of California; Mr. HYDE; Mr. SENSENBRENNER

TEXT: [*H7088] Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3350) to extend the U.S. Commission on Civil Rights.

The Clerk read as follows:

H.R. 3350

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1991".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975 et seq.) is amended --

(1) in section 7, by adding at the end the following: "There are authorized to be appropriated $6,000,000 for each fiscal year thereafter through fiscal year 1993."; and

(2) in section 8, by striking "1991" and inserting "1993".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. Brooks] will be recognized for 20 minutes and the gentleman from Illinois [Mr. Hyde] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3350, the Civil Rights Commission Reauthorization Act of 1991, reauthorizes the U.S. Commission on Civil Rights for 2 years, through 1993, at an annual authorization level of $6 million. During the past reauthorizations, including the last one -- which was for 22 months -- in 1989, concerns were expressed about the Commission's commitment to its fact-finding mission. The Commission seemed to be expending its energies more on divisive rhetoric than on fulfilling its mandate to investigate and report on the complex issues surrounding the protection of civil rights.

This mandate has guided the Commission since its creation under the Civil Rights Act of 1957 as a fact-finding agency. Despite changes in the Commission's structure -- from a Presidentially appointed body to a joint Presidential-Executive Commission -- the Commission's goals of studying [*H7089] discrimination and the denial of equal protection under the law have remained constant for over 30 years. This mission is important to ensuring that all of our citizens are treated fairly.

With the appointment of a new Chairman and the creation of a Staff Director position since the last reauthorization, the Commission has shown some signs of moving in a productive direction. The 2-year reauthorization allows that progress to continue and will encourage the agency to focus its resources on fulfilling its important statutory responsibilities.

Mr. Speaker, the chairman of our Civil and Constitutional Rights Subcommittee, the gentleman from California [Mr. Edwards] has done an excellent job on this important piece of legislation. I also commend the ranking minority member of the subcommittee Mr. Hyde, for his leadership and support of this legislation.

Since the authorization of the Civil Rights Commission expires today, it is important that we adopt this legislation and send it to the Senate. I urge the Members' support.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3350, to reauthorize the U.S. Commission on Civil Rights for a period of 2 years at a funding level of $6 million per year.

The subcommittee has carefully reviewed the activities and programs of the Commission during its most recent 22-month authorization. Unfortunately, the record of the Commission in that time

period is less than stellar. The Commission has had no hearings, no consultations, and has issued only one statutory report. In addition, the testimony from our oversight hearing with regard to future activities of the Commission was not comforting. While we are reassured by the sincerity of the Commissioners and its fine staff, it appears that, as a whole, the Commission is unable to focus its energy and resources on the completion of specific projects within its congressional mandate.

While the reauthorization may seem harsh, it is meant to send clear message to the Civil Rights Commission: Your work is needed more than ever, but Congress and the American people must have the confidence that it is being performed in a focused and thoughtful manner.

The administration supports reauthorization of the Civil Rights Commission and has no objection to the passage of H.R. 3350. I offer a copy of the statement of administration policy for the Record.

STATEMENT OF ADMINISTRATION POLICY

The Administration supports reauthorization of the U.S. Commission on Civil Rights and has no objection to House passage of H.R. 3350. The Administration, however, is concerned that the appropriation authorizations in the bill are insufficient and the two-year extension of the Commission's termination date is too brief.

H.R. 3350 would authorize appropriations of $6 million for each of FYs 1992 and 1993 for the Commission. These levels are significantly below the $10.8 million requested for the Commission in the President's FY 1992 Budget and less than the amounts in the FY 1992 House and Senate appropriations bills. The two-year extension of the Commission's termination date is well below the 10-year extension previously endorsed by the Administration.

The Administration will work to address its concerns during the House/Senate conference.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Edward], the distinguished chairman of the subcommittee that brought this bill out and channeled so much civil rights legislation to us over the years.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I thank my chairman, the gentleman from Texas [Mr. Brooks] and subscribe to his remarks, and those of the ranking member of the subcommittee, the gentleman from Illinois [Mr. Hyde].

We did examine the work of the Civil Rights Commission with great care and were disappointed with the record of the past few years.

The Congress, in establishing the Civil Rights Commission in 1957, established a fact-finding agency. The Commission strayed from that mission, and we expect them to get back on track.

After the controversy of the 1980's, there is a new spirit in the Civil Rights Commission, thanks to the distinguished new chairman, Mr. Arthur Fletcher, new Commissioners, and the new staff director. We expect good things. We expect that they are going to get back to their fact-finding mandate.

That is the message that we are sending to the Civil Rights Commission, that we want them back on track. It has been and again can be a very valuable institution.

We believe the $6 million authorized in H.R. 3350 will provide sufficient resources for the Commission's fact-finding work. However, it will not allow them to open additional regional offices in different parts of the country. That should be down the road, after the Civil Rights Commission comes back to us in a year or two and says, "This is what we have been doing. You see we have made these improvements. We're back to our statutory mandate, and we are asking Congress to authorize and appropriate a little more money so that these necessary offices can be put in place."

At every stage of the subcommittee's reauthorization review, we have had the cooperation and have been working together in a most agreeable fashion with the minority members of the subcommittee. The minority members being led by the distinguished gentleman from Illinois [Mr. Hyde].

Mr. Speaker, we had no disagreement about the 2-year reauthorization and the $6 million appropriation. I must admit that there was some discussion among some of the members who, after listening to the testimony and reading the record, recommended less money and a 1-year authorization, but the administration wants more.

We think that with the admonitions that we have raised during this reauthorization, that we are doing the right thing.

So Mr. Speaker, I thank the chairman of the committee, I thank the gentleman from Illinois [Mr. Hyde] and the Members on the other side of the aisle. Both the minority and majority staff have done good work.

We wish the Commission well. We are going to be their partners in the next 2 years of the authorization, and we hope that next year and the year after that we can return to this body, Mr. Speaker, with a more favorable report.

I ask that the bill be enacted as reported by the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I yield 8 minutes to the distinguished gentleman from Wisconsin [Mr. Sensenbrenner], who is the former ranking member on this subcommittee.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to this legislation. This legislation proposes to authorize $6 million per year for each of the next 2 years for a Federal agency that has been mismanaged, has not done anything, and is roundly criticized even by its supporters, as we have just heard from the last three speakers. It is time to put this Commission out of its misery. It is time for the Congress to abolish the Civil Rights Commission and to start up a new agency, in my opinion, which can act in a far more constructive and productive manner on the many issues relating to civil rights that face our society.

Even the supporters of the Commission within this Congress are less than enthusiastic about their endorsement. We have heard from the gentleman from Texas [Mr. Brooks], the gentleman from California [Mr. Edwards], and the gentleman from Illinois [Mr. Hyde]. None of these three gentlemen who have spoken prior to my speech today have given the Commission an enthusiastic endorsement. As a matter of fact, if I heard them correctly, it was not an endorsement at all.

I think in these times of fiscal constraint, when we are looking for ways to save money, to reduce the deficit, [*H7090] and to reset priorities, keeping the Commission members and the Commission staff on the Federal payroll are something that we can do without.

According to the gentleman from California [Mr. Edwards] at the Judiciary Committee markup on September 24, 1991:

During the last 2 years the Commission has only issued one report, and it has had no hearings or consultations.

Yet the appropriation has been a little bit less than $7 million per year for each of the last 2 years. Providing $14 million for one report and no hearings or consultations, in my opinion, is mismanagement of the highest order. To continue this Commission without any guarantees that there will be increased productivity I believe simply takes money out of the taxpayers' pocket and does not use it for good use.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I say to my distinguished friend, I would like to observe, and I know we Democrats are not perfect, we have many flaws, but we are not the ones who recommended the 10-year extension of this Commission at $10 million a year. That was this administration.

We thought that was a little much, and so we cut it back to $6 million, $1 million less than last year, and $4 million less than the administration requested. We did not make it for 10 years, we made it for 2 years.

I thought we used some judgment but also some compassion. We always are trying to help any administration when they are making an effort to do the Lord's work, and so we tried to help, but not too much.

Mr. SENSENBRENNER. Reclaiming my time, even my administration can be wrong, and I am awful afraid that it is on this one.

I think the administration's recommendation was 10 years too long and $10 million a year too high, given the track record of this Commission.

Twenty-two months ago when I was the ranking minority member of the subcommittee that my friend from California, Mr. Edwards, chairs, we took the floor and got an extension of this Civil Rights Commission and put them on notice that they were on strict probation during this 22-month period when their work would be carefully reviewed before the authorization was up, and before the Congress had to make a decision on what to do next.

I have carefully reviewed that record, as has my friend from Texas, and I think that one report, and no hearings, and no consultations for $7 million a year is missing the target. There is nothing in the record that indicates to me that this Commission is going to clean up its act. We do not have any kind of promises that there is going to be any more activity during the next 2 years than there was for the last 22 months.

Another member of the subcommittee, a member of my party, the gentleman from Florida [Mr. McCollum] last Tuesday at the markup said:

The Commission seems unable, in my judgment, to focus its energy and resources on the completion of specific projects within its congressional mandate.

The Commission members will be the same Commission members that we have had for the last 22 months and the same staff. Here the gentleman from Florida [Mr. McCollum] says that it has been unable to focus on what its job is. Should we continue it? Should we reward it with another $12 million of the taxpayers' hard-earned dollars? I thinkthe answer to that question is no.

During the last 22 months, the Commission has produced practically nothing. Many civil rights groups around the Nation have asked the Congress to close down the Commission, and in the words of my friend from California, the chairman of the subcommittee [Mr. Edwards] to get rid of it altogether. And I think the time has come for the Congress to accept that challenge and to get rid of it altogether, given its track record.

We have given this Commission chance after chance. We have funded them to keep most of their staff on the payroll, and there has been no results whatsoever.

At least they have gotten themselves out of the controversy that plagued the Commission during the decade of the 1980's, but apparently their way to avoid controversy is not to do anything except cash their paychecks. I think that given our deficit and given the fact that we cannot find money for unemployment compensation, we cannot find money for victims of crime, we cannot find money to help the police do their job, that a reallocation of resources away from a do-nothing Commission and into some programs that will help improve the quality of life for all Americans is very much in order.

I would hope that this Congress would defeat this bill today so that we can have a better focus on the issues of civil rights and save the taxpayers some money to boot.

I thank the gentleman from Illinois for yielding time, and yield back to him the balance of my time.]

Mr. HYDE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. McDermott). The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and pass the bill, H.R. 3350.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## viii. 137 Cong Rec S 13732: U.S. Commission on Civil Rights Reauthorization Act of 1991

FOCUS - 10 of 28 DOCUMENTS

Congressional Record -- Senate

Wednesday, September 25, 1991;
(Legislative day of Thursday, September 19, 1991)

102nd Cong. 1st Sess.

*137 Cong Rec S 13732*

REFERENCE: Vol. 137 No. 134

TITLE: UNITED STATES COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT of 1991

SPEAKER: Mr. HATCH; Mr. INOUYE; Mr. SIMON; Mr. STEVENS

TEXT: [*S13732] Mr. INOUYE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1754, a bill to reauthorize the U.S. Commission on Civil Rights, introduced earlier today by Senators Simon and Hatch.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1754) to amend the United States Commission on Civil Rights Act of 1983 to reauthorize the Commission, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMON. Mr. President, I am pleased to introduce this bill to reauthorize the U.S. Commission on Civil Rights. This legislation represents a bipartisan compromise effort and I am proud that Senator Orrin Harch is its chief cosponsor.

Like my earlier bill on this subject, this compromise bill extends the life of the Commission for 4 years. As chairman of the Constitution Subcommittee, I held a hearing on reauthorization and believe that the Commission merits continuation.

The challenge of living up to our principles on equality and civil rights will be made easier if the U.S. Commission resumes its historic role as the conscience of the Nation on these issues. The Commission, since its last reauthorization, has begun the long trek back to having a responsible voice in the civil rights area. When it is necessary to speak with an independent voice, such as its opposition to the administration's position on the Civil Rights Act and on minority scholarships, it has done so. Yet it has tended to stay on the sidelines of other civil rights concerns and has not produced the comprehensive assessments of civil rights that we were accustomed to previously. So, based on the promise the Commission has shown, I am offering this reauthorization bill.

Nonetheless, I will continue to watch the operations of the Commission closely over the next 4 years.

I stand ready to work with any of my colleagues in this or the other body to support the efforts of the Commission and guide the necessary improvements in order for it to truly serve the national interest.

Again, I wish to recognize the cooperation and fine work of Senator Hatch and his staff in reaching this bipartisan compromise.

Mr. HATCH. Mr. President, I am pleased to have worked out this compromise legislation with the distinguished Senator from Illinois, Paul Simon, in order to save the U.S. Commission on Civil Rights. I want to commend Senator Simon for his leadership on this important civil rights issue. Without his efforts, we would have no chance to preserve the Commission.

The Civil Rights Commission has been less visible in recent years than earlier in its history. The Commission, however, can still play a role in the effort to secure the civil rights of all Americans, regardless of race, ethnicity, religion, or gender.

By reauthorizing the Commission for 4 years, we preserve its independence. Earlier this year, I introduced a bill providing for a simple, 10-year reauthorization of the Commission. The bill Senator Simon and I are now introducing, while of a shorter duration, allows the Commission to proceed with its work without the fear of going out of existence constantly hanging over it. The bill also requires the Commission to submit to Congress at least one report annually on civil rights, or any subject or subjects under its current jurisdiction. The Commission is entirely free to choose the subjects of such reports.

I thank again my distinguished friend from Illinois, Senator Simon, and Susan Kaplan, John Trasvina, and Brant Lee of his staff.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time and passed.

So the bill (S. 1754) was deemed read a third time and passed, as follows:

S. 1754

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by striking subsection (c) and inserting the following new subsection:

"(c) The Commission shall prepare and submit to the appropriate committees of Congress and to the President at least one report annually on the status of civil rights in the United States, which report shall address any matter set forth in subsection (a).".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years 1992 through 1995.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1995".

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chair".

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ix. 137 Cong Rec S 7483: Statements on Introduced Bills and Joint Resolutions

FOCUS - 11 of 28 DOCUMENTS

Congressional Record -- Senate

Tuesday, June 11, 1991

102nd Cong. 1st Sess.

*137 Cong Rec S 7483*

REFERENCE: Vol. 137 No. 89

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: MR. SIMON

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

[*S7483] By Mr. SIMON:

S. 1264. A bill to extend the United States Commission on Civil Rights, and for other purposes; to the Committee on the Judiciary.

UNITED STATES COMMISSION ON CIVIL RIGHTS ACT

MR. SIMON. MR. PRESIDENT, I RISE TODAY IN ORDER TO INTRODUCE LEGISLATION TO REAUTHORIZE THE U.S. COMMISSION ON CIVIL RIGHTS. AUTHORIZATION OF THE COMMISSION IS SET TO EXPIRE ON SEPTEMBER 30, 1991, AND THE CONSTITUTION SUBCOMMITTEE WHICH I CHAIR HAS JURISDICTION OVER REAUTHORIZATION.

SINCE 1957, WHEN THE U.S. COMMISSION ON CIVIL RIGHTS WAS FIRST ESTABLISHED, OUR NATION HAS MADE TREMENDOUS PROGRESS IN FULFILLING THE PROMISE OF EQUAL RIGHTS. BUT THE PROBLEMS OF DISCRIMINATION HAVE NOT BEEN SOLVED; INDEED, THEY HAVE GROWN MORE COMPLEX. I BELIEVE THE MISSION OF THE COMMISSION IS TOO IMPORTANT TO LET IT DIE. THE NATION NEEDS A CIVIL RIGHTS COMMISSION THAT IS TRUE TO ITS ORIGINAL PURPOSE AS AN INDEPENDENT, NON-PARTISAN, FACTFINDING AGENCY.

THE LEGISLATION I OFFER TODAY WILL REAUTHORIZE THE COMMISSION FOR A 4-YEAR PERIOD THROUGH THE END OF FISCAL YEAR 1995. IT RETAINS THE BASIC ORGANIZATION OF THE COMMISSION AND EXPANDS ITS AUTHORITY TO ADDRESS LANGUAGE DISCRIMINATION AND GIVES IT THE AUTHORITY TO FILE AMICUS BRIEFS BEFORE THE U.S. SUPREME COURT ON MATTERS RELATING TO CIVIL RIGHTS.

MR. PRESIDENT, THE COMMISSION HISTORICALLY HAS NOT HAD ANY SPECIFIC POWERS, BUT IT HAS BEEN MOST PERSUASIVE. PRIOR TO THE TURMOIL AND CRISIS IT SUFFERED IN THE 1980'S, THE COMMISSION WAS CONSIDERED THE CONSCIENCE OF THE NATION ON CIVIL RIGHTS MATTERS. WHEN IT RECOMMENDED LEGISLATION, THE CONGRESS AND THE PRESIDENT LISTENED. I WANT TO SEE A COMMISSION THAT RETURNS TO THAT SPIRIT OF EQUAL PROTECTION OF THE LAWS FOR ALL AMERICANS.

IN 1989, CONGRESS AND THE PRESIDENT REAUTHORIZED THE COMMISSION FOR A PERIOD OF 22 MONTHS. I, FOR ONE, FELT THAT THE COMMISSION COULD USE THIS PERIOD TO DEMONSTRATE A RENEWED COMMITMENT TO CIVIL RIGHTS AND TO RESTORE MUCH OF THE CREDIBILITY IT HAD LOST IN THE 1980'S. WHILE I AM HEARTENED TO SEE THAT THE COMMISSION IS BEGINNING ON THE WAY TO ACCOMPLISHING THAT, IT HAS A LOT OF GROUND TO COVER. IT NOT ONLY MUST BE RESPONDING TO CIVIL RIGHTS ISSUES OF THE DAY, BUT I WANT TO SEE THE CIVIL RIGHTS COMMISSION TAKING A LEADERSHIP ROLE ONCE AGAIN.

THE PRESIDENT HAS APPOINTED A CHAIRMAN, ARTHUR FLETCHER, WHO HAS A REAL HISTORY IN CIVIL RIGHTS, AND OUR COLLEAGUE SENATOR DOLE APPOINTED THE FIRST MEMBER OF THE DISABILITY COMMUNITY TO THE COMMISSION. THE NATION'S COMPLEXION IS CHANGING AND I AM PLEASED THAT THE COMMISSION HAS SPENT SOME TIME LOOKING AT THE CIVIL RIGHTS CONCERNS OF HISPANICS AND ASIAN-AMERICANS, THE NATION'S FASTEST GROWING ETHNIC GROUPS.

FINALLY, MR. PRESIDENT, LET ME JUST ADD THAT I AM AWARE THAT THERE STILL EXISTS SKEPTICISM AMONG SOME OF THOSE WHO ARE MOST CLOSELY INVOLVED IN CIVIL RIGHTS ABOUT THE VIABILITY OF THE COMMISSION.

FRANKLY, THE COMMISSION MUST DO MORE TO REACH OUT TO ORGANIZATIONS AND COMMUNITIES WITH WHICH IT HAS WORKED CLOSELY IN THE PAST. THE COMMISSION NEEDS CONTINUED OVERSIGHT BY CONGRESS JUST AS THE WHOLE AREA OF CIVIL RIGHTS ITSELF MERITS CONTINUED VIGILANCE BY THE AMERICAN PEOPLE.

I WILL HOLD A HEARING ON MY AND ANOTHER REAUTHORIZATION BILL IN THE CONSTITUTION SUBCOMMITTEE LATER THIS WEEK. I LOOK FORWARD TO WORKING WITH ANY INTERESTED SENATORS ON REAUTHORIZING THE COMMISSION AND RESTORING IT TO ITS PLACE IN THE FOREFRONT OF ERADICATING THE POISONS OF BIGOTRY AND DISCRIMINATION FROM WHEREVER THEY EXIST IN OUR COUNTRY.

MR. PRESIDENT, I ASK UNANIMOUS CONSENT THAT MY LEGISLATION, THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT, BE PRINTED IN THE RECORD.

THERE BEING NO OBJECTION, THE BILL WAS ORDERED TO BE PRINTED IN THE RECORD, AS FOLLOWS:

S. 1264

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

THIS ACT MAY BE CITED AS THE "UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1991".

SEC. 2. REFERENCES.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED, WHENEVER IN THIS ACT AN AMENDMENT OR REPEAL IS EXPRESSED IN TERMS OF AN AMENDMENT TO, OR A REPEAL OF, A SECTION OR OTHER PROVISION, THE REFERENCE SHALL BE CONSIDERED TO BE MADE TO A SECTION OR OTHER PROVISION OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983 (42 U.S.C. 1975 ET SEQ.).

SEC. 3. ESTABLISHMENT OF THE COMMISSION.

SECTION 2 (42 U.S.C. 1975) IS AMENDED --

(1) IN SUBSECTION (A), BY ADDING AT THE END THE FOLLOWING NEW SENTENCE: "THE COMMISSION SHALL BE AN INDEPENDENT, NONPARTISAN, FACT-FINDING BODY.";

(2) IN SUBSECTION (B)(1)(A), BY INSERTING BEFORE THE SEMICOLON THE FOLLOWING: ", AND OF THE MEMBERS APPOINTED NOT MORE THAN THREE SHALL BE APPOINTED FROM THE SAME POLITICAL PARTY"; AND

(3) BY STRIKING SUBSECTION (C) AND INSERTING THE FOLLOWING NEW SUBSECTION:

"(C)(1) THERE SHALL BE A CHAIRPERSON AND A VICE CHAIRPERSON OF THE COMMISSION (HEREAFTER IN THIS ACT REFERRED TO AS THE 'CHAIRPERSON' AND

THE 'VICE CHAIRPERSON', RESPECTIVELY), WHO SHALL BE SELECTED BY A MAJORITY OF THE MEMBERS OF THE COMMISSION, FROM THE MEMBERSHIP OF THE COMMISSION.

"(2) THE CHAIRPERSON AND VICE CHAIRPERSON SHALL SERVE FOR TERMS OF 3 YEARS AND MAY SERVE SUCCESSIVE TERMS.

"(3) THE VICE CHAIRPERSON SHALL ACT IN THE PLACE OF THE CHAIRPERSON IN THE ABSENCE OF THE CHAIRPERSON.

"(4) IN THE ABSENCE OF THE CHAIRPERSON AND THE VICE CHAIRPERSON, THE SENIOR MEMBER OF THE COMMISSION SHALL SERVE AS THE ACTING CHAIRPERSON OF THE COMMISSION.".

SEC. 4. EVIDENCE OR TESTIMONY IN EXECUTIVE SESSION.

SECTION 3(G) (42 U.S.C. 1975A(G)) IS AMENDED --

(1) BY INSERTING "(1)" AFTER THE SUBSECTION DESIGNATION;

(2) IN PARAGRAPH (1) (AS DESIGNATED BY PARAGRAPH (1) OF THIS SECTION), BY STRIKING "WHOEVER" AND INSERTING "A PARTY WHO"; AND

(3) BY ADDING AT THE END THE FOLLOWING NEW PARAGRAPH:

"(2) THE TERM 'PARTY' MEANS --

"(A) A PERSON WHOSE SERVICES ARE COMPENSATED BY THE FEDERAL GOVERNMENT; OR

"(B) AN INDIVIDUAL APPOINTED UNDER SECTION 6(C) WHO PROVIDES VOLUNTARY SERVICES TO THE COMMISSION.".

SEC. 5. COMPENSATION OF MEMBERS OF THE COMMISSION.

SECTION 4(A) (42 U.S.C. 1975B(A)) IS AMENDED --

(1) BY INSERTING "(1)" AFTER THE SUBSECTION DESIGNATION;

(2) IN PARAGRAPH (1) (AS DESIGNATED BY PARAGRAPH (1) OF THIS PARAGRAPH), BY STRIKING "SHALL RECEIVE A SUM EQUIVALENT" AND ALL THAT FOLLOWS THROUGH "WORK OF THE COMMISSION, SHALL" AND INSERTING "SHALL RECEIVE COMPENSATION EQUAL TO THE HOURLY EQUIVALENT OF THE RATE SPECIFIED FOR LEVEL IV OF THE EXECUTIVE SCHEDULE UNDER SECTION 5315 OF TITLE 5, UNITED STATES CODE, FOR EACH HOUR THE MEMBER IS ENGAGED IN THE WORK OF THE COMMISSION, AND, WHILE ENGAGED IN THE WORK, SHALL"; AND

(3) BY ADDING AT THE END THE FOLLOWING NEW PARAGRAPH:

"(2) THE TOTAL COMPENSATION THAT A MEMBER OF THE COMMISSION MAY RECEIVE UNDER SUBPARAGRAPH (A) IN ANY ONE CALENDAR YEAR SHALL NOT EXCEED ONE-HALF OF THE RATE SPECIFIED FOR LEVEL IV OF THE EXECUTIVE SCHEDULE UNDER SECTION 5315 OF TITLE V, UNITED STATES CODE.".

SEC. 6. DUTIES OF THE COMMISSION.

SECTION 5 (42 U.S.C. 1975C) IS AMENDED --

(1) BY STRIKING SUBSECTION (A) AND INSERTING THE FOLLOWING NEW SUBSECTION:

"(A) THE COMMISSION SHALL --

"(1) INVESTIGATE ALLEGATIONS THAT --

"(A) ARE MADE IN WRITING;

"(B) ARE MADE UNDER OATH OR AFFIRMATION;

"(C) SET FORTH FACTS ON WHICH SUCH ALLEGATIONS ARE BASED; AND

"(D) ALLEGE THAT CERTAIN CITIZENS OF THE UNITED STATES --

"(I) ARE BEING DENIED THE RIGHT TO VOTE, AND HAVE SUCH VOTE PROPERLY COUNTED, ON THE BASIS OF THE RACE, COLOR, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN, OF THE CITIZENS; OR

"(II) ARE UNLAWFULLY BEING ACCORDED OR DENIED THE RIGHT TO VOTE, AND HAVE SUCH VOTE PROPERLY COUNTED, IN ANY ELECTION OF A PRESIDENTIAL ELECTOR, MEMBER OF THE SENATE, OR MEMBER OF THE HOUSE OF REPRESENTATIVES, AS A RESULT OF A PATTERN OR PRACTICE OF FRAUD OR DISCRIMINATION IN THE CONDUCT OF SUCH ELECTION;

"(2) STUDY AND COLLECT INFORMATION, AND APPRAISE THE LAWS AND POLICIES OF THE FEDERAL GOVERNMENT, CONCERNING LEGAL DEVELOPMENTS CONSTITUTING DISCRIMINATION, OR A DENIAL OF EQUAL PROTECTION OF THE LAWS UNDER THE CONSTITUTION, [*S7484] ON THE BASIS OF RACE, COLOR, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN, WITH RESPECT TO --

"(A) ADMINISTRATION OF JUSTICE;

"(B) EDUCATIONAL OPPORTUNITY;

"(C) EMPLOYMENT OPPORTUNITY; AND

"(D) EQUAL HOUSING OPPORTUNITY; AND

"(3) SERVE AS A NATIONAL CLEARINGHOUSE FOR INFORMATION CONCERNING DISCRIMINATION, OR DENIAL OF EQUAL PROTECTION OF THE LAWS UNDER THE CONSTITUTION, ON THE BASIS OF RACE, COLOR, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN, WITH RESPECT TO ACTIVITIES INCLUDING --

"(A) VOTING;

"(B) EDUCATION;

"(C) HOUSING;

"(D) EMPLOYMENT;

"(E) USE OF PUBLIC FACILITIES;

"(F) TRANSPORTATION; AND

"(G) ADMINISTRATION OF JUSTICE.";

(2) BY STRIKING SUBSECTION (C) AND INSERTING THE FOLLOWING NEW SUBSECTION:

"(C)(1) THE COMMISSION SHALL SUBMIT AN ANNUAL REPORT TO THE APPROPRIATE COMMITTEES OF CONGRESS AND TO THE PRESIDENT CONTAINING INFORMATION CONCERNING --

"(A) THE EXISTING STATUS OF CIVIL RIGHTS IN THE UNITED STATES;

"(B) THE ENFORCEMENT OF CIVIL RIGHTS LAWS BY FEDERAL, STATE, AND LOCAL GOVERNMENTS;

"(C) THE EXISTING STATUS OF THE POLITICAL, SOCIAL, AND ECONOMIC EQUALITY OF MINORITIES AND WOMEN;

"(D) THE IMPACT OF FEDERAL FISCAL POLICIES, PROGRAMS, AND ACTIVITIES ON MINORITIES AND WOMEN; AND

"(E) ANY OTHER INFORMATION THAT THE CHAIRPERSON DETERMINES TO BE APPROPRIATE.

"(2)(A) THE COMMISSION SHALL APPRAISE THE LAWS AND POLICIES OF EACH STATE AND THE FEDERAL GOVERNMENT TO DETERMINE THE IMPACT OF THE LAWS AND POLICIES ON --

"(I) DENIAL OF THE RIGHT OF MINORITY GROUPS, INCLUDING AFRICAN AMERICANS, HISPANIC AMERICANS, ASIAN AMERICANS, NATIVE AMERICANS, AMERICANS FROM THE PACIFIC ISLANDS, WOMEN, AND DISABLED INDIVIDUALS, TO VOTE; AND

"(II) THE POLITICAL PARTICIPATION OF THE MINORITY GROUPS.

"(B) THE COMMISSION SHALL INCLUDE THE RESULT OF THE APPRAISALS CONDUCTED UNDER SUBPARAGRAPH (A) IN THE REPORTS REQUIRED UNDER PARAGRAPH (1).";

(3) BY STRIKING SUBSECTION (D) AND INSERTING THE FOLLOWING NEW SUBSECTION:

"(D) THE COMMISSION MAY SUBMIT AN AMICUS CURIAE BRIEF TO THE SUPREME COURT OF THE UNITED STATES ON ANY MATTER WITHIN THE JURISDICTION OF THE COMMISSION, IF A MAJORITY OF THE MEMBERS OF THE COMMISSION APPROVE THE SUBMISSION OF SUCH BRIEF."; AND

(4) BY STRIKING SUBSECTION (F).

SEC. 7. POWERS OF THE COMMISSION.

SECTION 6 OF THE ACT (42 U.S.C. 1975D) IS AMENDED --

(1) IN SUBSECTION (A) --

(A) IN PARAGRAPH (1) --

(I) BY INSERTING "(A)" AFTER THE PARAGRAPH DESIGNATION;

(II) IN SUBPARAGRAPH (A) (AS DESIGNATED BY SUBPARAGRAPH (A) OF THIS PARAGRAPH), BY --

(I) STRIKING "STAFF DIRECTOR" AND INSERTING "EXECUTIVE DIRECTOR"; AND

(II) STRIKING "APPOINTED" AND ALL THAT FOLLOWS AND INSERTING "SELECTED BY A MAJORITY OF THE MEMBERS OF THE COMMISSION."; AND

(III) BY ADDING AT THE END THE FOLLOWING NEW SUBPARAGRAPHS:

"(B) THE EXECUTIVE DIRECTOR SHALL SERVE AS THE CHIEF OPERATING OFFICER OF THE COMMISSION AND SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE AGENCY, INCLUDING MATTERS PERTAINING TO EMPLOYMENT, USE AND EXPENDITURE OF FUNDS, AND GENERAL ADMINISTRATION, CONSISTENT WITH POLICIES DETERMINED BY THE COMMISSION.

"(C) IN THE EVENT OF A VACANCY IN THE POSITION OF EXECUTIVE DIRECTOR, THE CHAIRPERSON SHALL DESIGNATE, WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS OF THE COMMISSION, AN EMPLOYEE OF THE COMMISSION TO SERVE AS ACTING EXECUTIVE DIRECTOR.

"(D) THE EXECUTIVE DIRECTOR SHALL RECEIVE COMPENSATION AT THE RATE SPECIFIED FOR LEVEL II OF THE EXECUTIVE SCHEDULE UNDER SECTION 5313 OF TITLE 5, UNITED STATES CODE."; AND

(B) BY STRIKING PARAGRAPH (2) AND INSERTING THE FOLLOWING NEW PARAGRAPH:

"(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSION SHALL BE BOUND BY THE PROVISIONS OF TITLE 5, UNITED STATES CODE, BY WHICH THE COMMISSION ON CIVIL RIGHTS, ESTABLISHED BY THE CIVIL RIGHTS ACT OF 1957, WAS BOUND.";

(2) BY STRIKING SUBSECTION (B) AND INSERTING THE FOLLOWING NEW SUBSECTION:

"(B)(1) EXCEPT AS PROVIDED IN SECTION 3111 OF TITLE 5, UNITED STATES CODE, AND IN PARAGRAPH (2)(B), THE COMMISSION SHALL NOT ACCEPT VOLUNTARY SERVICES.

"(2) SUBJECT TO PARAGRAPH (4), THE COMMISSION MAY, IN ORDER TO CARRY OUT THE DUTIES OF THE COMMISSION --

"(A) ACCEPT, USE, AND DISPOSE OF GIFTS OR DONATIONS AND PROPERTY, MADE BY FEDERAL, STATE, OR LOCAL AGENCIES, OR INDIVIDUALS APPOINTED UNDER SECTION 2(B)(1) OR SECTION 6(C); AND

"(B) NOTWITHSTANDING SECTION 1342 OF TITLE 31, UNITED STATES CODE, ACCEPT VOLUNTARY SERVICES PROVIDED BY AN AGENCY DESCRIBED IN SUBPARAGRAPH (A) OR AN INDIVIDUAL APPOINTED UNDER SECTION 6(C).

"(3) SUBJECT TO PARAGRAPH (4), AND IN ACCORDANCE WITH THE POLICY AND PROGRAM DIRECTION ESTABLISHED BY THE MEMBERS OF THE COMMISSION AND

WITH THE CLEARINGHOUSE FUNCTION OF THE AGENCY, THE COMMISSION MAY ENTER INTO COOPERATIVE AGREEMENTS WITH FEDERAL, STATE AND LOCAL AGENCIES TO PARTICIPATE IN --

"(A) PUBLIC INFORMATION PROGRAMS, INCLUDING FORUMS, CONFERENCES OR OTHER EDUCATIONAL EVENTS; AND

"(B) SUCH OTHER ACTIVITIES AS, FROM TIME TO TIME, MAY BE NECESSARY TO CARRY OUT THE DUTIES OF THE COMMISSION.

"(4)(A) THE COMMISSION MAY ACCEPT, USE, AND DISPOSE OF THE GIFTS AND DONATIONS OF PROPERTY DESCRIBED IN SUBPARAGRAPH (A), AND ACCEPT THE VOLUNTARY SERVICES DESCRIBED IN SUBPARAGRAPH (B), OF PARAGRAPH (2), AND ENTER INTO THE COOPERATIVE AGREEMENTS DESCRIBED IN PARAGRAPH (3), TO THE EXTENT THE ACCEPTANCE, USE, DISPOSAL, OR ENTRY INTO AGREEMENTS --

"(I) DOES NOT CREATE THE APPEARANCE OF A CONFLICT OF INTEREST BECAUSE OF THE NATURE OF --

"(I) THE PERSONS, OR AFFILIATES OF THE PERSONS, PROVIDING THE GIFTS, DONATIONS, OR VOLUNTARY SERVICES, OR ENTERING INTO THE AGREEMENTS; OR

"(II) THE ACTIVITIES THAT ARE THE SUBJECT OF THE AGREEMENTS; OR

"(II) DOES NOT CONSTITUTE OR IMPLY AN ENDORSEMENT BY THE COMMISSION OF THE PRODUCTS OR SERVICES OF THE PERSONS OR AFFILIATES DESCRIBED IN CLAUSE (I)(I).

"(B) THE COMMISSION SHALL ENSURE THAT A PERSON ENTERING INTO THE COOPERATIVE AGREEMENTS DESCRIBED IN PARAGRAPH (3) SHALL RECEIVE APPROPRIATE RECOGNITION IN THE ACTIVITIES THAT ARE THE SUBJECT OF THE AGREEMENTS, TO THE EXTENT THAT THE RECOGNITION DOES NOT CONSTITUTE OR IMPLY AN ENDORSEMENT BY THE COMMISSION OF, OR GIVE UNDUE RECOGNITION TO, THE PERSON.";

(3) IN SUBSECTION (C) --

(A) BY INSERTING "(1)(A)" AFTER THE SUBSECTION DESIGNATION;

(B) IN PARAGRAPH (1) (AS DESIGNATED BY SUBPARAGRAPH (A) OF THIS PARAGRAPH), BY ADDING AT THE END THE FOLLOWING NEW SUBPARAGRAPH:

"(B) AS USED IN THIS PARAGRAPH, THE TERM 'STATE' INCLUDES THE DISTRICT OF COLUMBIA, PUERTO RICO, AND ANY COMMONWEALTH OR TERRITORY OF THE UNITED STATES."; AND

(C) BY ADDING AT THE END THE FOLLOWING NEW PARAGRAPHS:

"(2) AN ADVISORY COMMITTEE ESTABLISHED UNDER PARAGRAPH (1) SHALL HAVE THE SAME INVESTIGATIVE AUTHORITY AS THE COMMISSION HAS UNDER SECTION 3 EXCEPT THAT SUCH COMMITTEE SHALL NOT --

"(A) SUBPOENA A WITNESS OR REQUIRE SUCH WITNESS TO PRODUCE WRITTEN OR OTHER MATERIAL FOR THE COMMISSION; OR

"(B) CONDUCT INVESTIGATIONS BEYOND THE BOUNDARY OF THE STATE IN WHICH SUCH COMMITTEE IS LOCATED.

"(3) A MEMBER OF AN ADVISORY COMMITTEE SHALL NOT BE CONSIDERED TO BE AN 'OFFICER' OR 'EMPLOYEE', AS DEFINED IN SECTIONS 2104 AND 2105, RESPECTIVELY, OF TITLE 5, UNITED STATES CODE."; AND

(4) BY ADDING AT THE END THE FOLLOWING NEW SUBSECTION:

"(J) THE COMMISSION MAY USE NOT MORE THAN 0.1 PERCENT OF THE FUNDS APPROPRIATED UNDER SECTION 7 FOR OFFICIAL REPRESENTATION AND RECEPTION.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

SECTION 7 (42 U.S.C. 1975E) IS AMENDED TO READ AS FOLLOWS:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"THERE ARE AUTHORIZED TO BE APPROPRIATED TO CARRY OUT THIS ACT SUCH SUMS AS MAY BE NECESSARY FOR EACH OF THE FISCAL YEARS 1992 THROUGH 1996.".

SEC. 9. TERMINATION.

SECTION 8 (42 U.S.C. 1975F) IS AMENDED BY STRIKING "1991" AND INSERTING "1995".

SEC. 10. CONFORMING AMENDMENTS.

SUBSECTIONS (A), (D), AND (F) OF SECTION 3, AND SECTION 6(F) (42 U.S.C. 1975A(A), (D), AND (F), AND 1975D(F)) ARE AMENDED BY STRIKING "CHAIRMAN" EACH PLACE THE TERM APPEARS AND INSERTING "CHAIRPERSON".

## x. 137 Cong Rec S 4086: U.S. Commission on Civil Rights Reauthorization Act of 1991

FOCUS - 12 of 28 DOCUMENTS

Congressional Record -- Senate

Thursday, March 21, 1991;
(Legislative day of Wednesday, February 6, 1991)

102nd Cong. 1st Sess.

*137 Cong Rec S 4086*

REFERENCE: Vol. 137 No. 49

TITLE: U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

[*S4086] MR. D'AMATO. MR. PRESIDENT, I RISE TODAY TO COSPONSOR S. 617, A BILL TO REAUTHORIZE THE U.S. COMMISSION ON CIVIL RIGHTS FOR 10 YEARS. CURRENTLY, THE COMMISSION'S AUTHORIZATION EXPIRES AT THE END OF THE CURRENT FISCAL YEAR. AS MOST OF US KNOW, THE COMMISSION HAS PLAYED AN IMPORTANT ROLE IN HELPING TO ERADICATE DISCRIMINATION FROM THE AMERICAN WAY OF LIFE SINCE IT WAS ORIGINALLY ESTABLISHED IN 1957.

SINCE 1957, THE COMMISSION ON CIVIL RIGHTS HAS COLLECTED AND ANALYZED INFORMATION AND DEVELOPMENTS CONCERNING EQUAL PROTECTION AS WELL AS DISCRIMINATION. STUDIES HAVE ALSO BEEN MADE [*S4087] DEALING WITH THE ADMINISTRATION OF JUSTICE IN AREAS SUCH AS VOTING RIGHTS, ENFORCEMENT OF FEDERAL CIVIL RIGHTS LAWS, AND EQUAL OPPORTUNITY. IN ADDITION, THE COMMISSION SERVES AS AN INFORMATION POOL ON DISCRIMINATION, EASILY ACCESSIBLE BY THE PRESIDENT AND CONGRESS.

THE JOB PERFORMED BY THE COMMISSION IS OFTEN DIFFICULT, AND COMMISSION DECISIONS ARE NOT ALWAYS AGREEABLE TO EVERYONE'S DESIRES, BUT, I FEEL THEY HAVE HELPED PLAY A VITAL ROLE IN COMBATING DISCRIMINATION IN THE UNITED STATES TODAY. THE DUTIES OF THE COMMISSION SHOULD BE ALLOWED TO CONTINUE WITHOUT CONSTANT CONGRESSIONAL INTERVENTION AND INTERRUPTION.

MR. PRESIDENT, THE COMMISSION ON CIVIL RIGHTS SERVES A FUNCTION THAT EXEMPLIFIES ONE OF OUR NATIONAL IDEALS -- EQUAL OPPORTUNITY. A 10-YEAR REAUTHORIZATION WOULD ENABLE THE COMMISSION TO CONTINUE UNINTERRUPTED FOR AN EXTENDED PERIOD OF TIME. I COMMEND SENATOR HATCH FOR INTRODUCING THIS BILL AND I ENCOURAGE MY COLLEGUES TO JOIN ME AS A COSPONSOR.

## xi. 137 Cong Rec S 3042: Statements on Introduced Bills and Joint Resolutions

FOCUS - 13 of 28 DOCUMENTS

Congressional Record -- Senate

Tuesday, March 12, 1991;
(Legislative day of Wednesday, February 6, 1991)

102nd Cong. 1st Sess.

REFERENCE: Vol. 137 No. 42

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: Mr. HATCH ; MR. MCCAIN

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

[*S3042] By Mr. HATCH (for himself, Mr. Specter, Mr. Simpson, Mr. Domenici, Mr. Inouye, Mr. Cochran, Mr. D'Amato, Mr. McCain, Mr. Bond, and Mr. Gorton):

S. 617. A bill to reauthorize the Commission on Civil Rights; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT

Mr. HATCH. Mr. President, I, along with nine of my colleagues, am introducing the U.S. Commission on Civil Rights Reauthorization Act of 1991. This bill reauthorizes the U.S. Commission on Civil Rights for 10 years. Presently, the Commission's authorization expires on September 30, 1991.

The Commission was originally established in 1957 and reauthorized for short periods thereafter. In 1983, the Commission was reconstituted, with four members appointed by the President, and two each appointed by the President pro tempore of the Senate and by the Speaker of the House. Senate confirmation is not required (42 U.S.C. 1975 et seq.).

The Commission's general mission has remained the same: to investigate allegations of discriminatory denial of voting rights; to study and collect information concerning legal developments constituting discrimination; appraise Federal laws and policies regarding discrimination, and serve as a national clearinghouse of information on discrimination.

I have not always agreed with the Commission's position on issues over the years, but I believe it has the potential to play a role in the Nation's continuing commitment to eradicate discrimination in American life. In my view, Congress should reauthorize the commission for a lengthy time -- 10 years -- and allow it to do its work unimpeded by periodic fear that it may not be reauthorized.

MR. MCCAIN. MR. PRESIDENT, I AM PROUD TO BE AN ORIGINAL COSPONSOR OF THE U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991. QUICK PASSAGE OF THIS MEASURE WILL HELP OUR NATION ELIMINATE ALL FORMS OF DISCRIMINATION.

THE COMMISSION ON CIVIL RIGHTS HAS PERFORMED A VALUABLE SERVICE FOR OUR CITIZENS, AND THE COMMISSION MUST BE ALLOWED TO CONTINUE ITS IMPORTANT WORK. SINCE ITS CREATION IN 1957, THE COMMISSION ON CIVIL RIGHTS HAS BEEN TASKED TO COLLECT AND STUDY INFORMATION ON DISCRIMINATION OR DENIALS OF EQUAL PROTECTION OF THE LAWS DUE TO RACE, COLOR, RELIGION, SEX, AGE, DISABILITY, AND NATIONAL ORIGIN. THE

COMMISSION ALSO STUDIES AND MAKES FINDINGS OF FACT ON THE ADMINISTRATION OF JUSTICE IN SUCH AREAS AS VOTING RIGHTS, ENFORCEMENT OF FEDERAL CIVIL RIGHTS LAWS, AND EQUALITY OF OPPORTUNITY IN EDUCATION, EMPLOYMENT, AND HOUSING. THE COMMISSION THEN REPORTS ITS FINDINGS TO THE PRESIDENT AND CONGRESS SO THAT THE LAWMAKING AND EXECUTIVE BRANCHES MAY ACT ON THEM.

THE JOB THAT THE COMMISSION ON CIVIL RIGHTS PERFORMS IS NOT AN EASY ONE, AND ONE THAT IS NOT ALWAYS POPULAR. I, MYSELF, HAVE NOT ALWAYS AGREED WITH THE COMMISSON'S FINDINGS ON ISSUES. I BELIEVE, HOWEVER, THAT THE COMMISSION HAS PROVED EXTREMELY IMPORTANT IN ERADICATING DISCRIMINATION FROM THE AMERICAN LANDSCAPE, AND THAT IT SHOULD BE ALLOWED TO CONTINUE ITS MISSION WITHOUT CONSTANT AND CONTINUAL CONGRESSIONAL INTERVENTION.

LAST YEAR THE CONGRESS PASSED -- WITH MY STRONG SUPPORT -- AND THE PRESIDENT SIGNED, THE LANDMARK AMERICANS WITH DISABILITIES ACT. THIS YEAR, THE CONGRESS WILL LIKELY DEBATE ADDITIONAL CIVIL RIGHTS LEGISLATION. THE EFFECTIVENESS OF THESE MEASURES AND THEIR SUCCESSFUL IMPLEMENTATION IS NOT ALWAYS EASY TO DISCERN, AND THE COMMISSION CAN PLAY A VITAL ROLE IN MONITORING THE EFFECTS OF LAWS ENACTED BY THE CONGRESS TO PROMOTE EQUAL OPPORTUNITY.

MR. PRESIDENT, EQUALITY OF OPPORTUNITY IS ONE OF THE CORNERSTONES OUR NATION WAS BUILT UPON. HOWEVER, THIS PRINCIPLE THAT MAKES OUR COUNTRY SO GREAT IS ALSO VERY TENUOUS. WE MUST BE VIGILANT IN OUR PROTECTION OF EQUAL OPPORTUNITY, AND THE COMMISSION ON CIVIL RIGHTS WILL HELP US DO EXACTLY THAT. MR. PRESIDENT, THE COMMISSION SHOULD BE REAUTHORIZED, AND I URGE MY COLLEAGUES TO SUPPORT THIS MEASURE.

## xii. 136 Cong Rec E 1799

FOCUS - 14 of 28 DOCUMENTS

Congressional Record -- Extension of Remarks

Wednesday, June 6, 1990

101st Cong. 2nd Sess.

*136 Cong Rec E 1799*

REFERENCE: Vol. 136 No. 70

TITLE: VOTING RECORD

SPEAKER: HON. DONALD J. PEASE OF OHIO
IN THE HOUSE OF REPRESENTATIVES

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the House on the floor.

[*E1799] MR. PEASE. MR. SPEAKER, IT HAS BECOME MY PRACTICE TO INSERT PERIODICALLY IN THE CONGRESSIONAL RECORD A LIST OF KEY VOTES THAT I HAVE CAST IN THE U.S. HOUSE OF REPRESENTATIVES.

THE LIST IS ARRANGED IN THIS MANNER: EACH ITEM BEGINS WITH THE ROLL CALL VOTE NUMBER OF THE BILL OR RESOLUTION THAT THE HOUSE WAS CONSIDERING, FOLLOWED BY THE BILL NUMBER AND A SUMMARY OF THE ISSUE. THIS IS FOLLOWED BY MY OWN VOTE ON THE ISSUE AND THE VOTE OUTCOME.

THIS LIST OF VOTES COVERS THE PERIOD OF OCTOBER 21, 1989, THROUGH MAY 24, 1990.

KEY VOTES OF CONGRESSMAN DON J. PEASE

(291) H.R. 2989. FY 1990 Treasury Appropriations. Providing $18,394,206,000 in FY 1990 for the Postal Service, the Treasury Department and other government agencies. No. Passed 383-30.

(295) H.R. 3402. Aid to Poland and Hungary. Authorizing $837.5 million in FY 1990-92 for U.S. aid programs to Hungary and Poland. Yes. Passed 345-47.

(302) H. J. Res. 423. FY 1990 Continuing Appropriations. Continuing appropriations at existing levels for FY 1990 through Nov. 15, or until bills allowing regular appropriations are signed into law, and providing disaster assistance for victims of the California earthquake. No. Passed 321-99.

(303) H.R. 2916. FY 1990 VA and HUD Appropriations. Providing $66,960,850,000 in FY 1990 for the Department of Housing and Urban Development, the Department of Veterans Affairs, the Environmental Protection Agency, NASA, the National Science Foundation and various other agencies. Yes. Passed 363-53.

(305) H.R. 2990. FY 1990 Labor, HHS, and Education Appropriations. Overriding President Bush's veto of the bill appropriating $156,743,750,000 in FY 1990 for the Departments of Labor, Health and Human Services, and Education and related agencies. Yes. Failed 231-191. (2/3 vote required for passage.)

(307) H.R. 45. Chinese and Central American Stability. Granting "temporary protected status" to citizens of Nicaragua, El Salvador and the People's Republic of China residing in the U.S. and allowing the attorney general to extend special protective status to other foreign citizens fleeing turmoil in their own countries. Yes. Passed 258-162.

(313) H.R. 2991. FY 1990 Commerce, Justice, and State Department Appropriations. Appropriating $17,249,608,000 in FY 1990 for the Departments of Justice, Commerce, [*E1800] State, related agencies and the judiciary. No. Passed 323-81.

(319) H.R. 3015. FY 1990 Transportation Appropriations. Providing $11,968,919,569 in FY 1990 for the Department of Transportation. Yes. Passed 394-21.

(324) H.R. 2710. Minimum-Wage Increase. Increasing the minimum wage to $4.25 an hour over two years and allowing a temporary training wage for 16- to 19-year-old employees. Yes. Passed 382-37.

(328) H.R. 3443. Airline Stock Acquisition Review. Prohibiting certain airline buyouts if major wage cuts, employee layoffs, threats to safety or competitiveness, or foreign controlling interest would result; and prohibiting a potential buyer who has presided over more than one airline bankruptcy from purchasing an airline. Yes. Passed 301-113.

(335) H.R. 2459. FY 1990 Coast Guard Authorization. Authorizing up to $3.38 billion in FY 1990 for the Coast Guard. Yes. Passed 383-3.

(336) H. J. Res. 280. Debt-Limit Increase. Agreeing to the Senate amendment repealing Section 89 business tax regulations which prohibit discrimination in employee-benefit plans and raising the federal debt limit to $3.1227 trillion. Yes. Passed 269-99.

(338) H.R. 1465. Oil Spill Liability. Amendment preventing federal laws from overriding tougher state oil-spill laws. Yes. Passed 279-143.

(339) H.R. 1465. Oil Spill Liability. Amendment limiting an individual seeking oil-spill damage compensation to filing under either state or federal laws, but not both. No. Failed 169-251.

(343) H.R. 2461. FY 1990 Defense Authorization. Authorizing $302.9 billion in FY 1990 for the Defense Department and defense-related Energy Department programs. No. Passed 236-172.

(345) H.R. 1465. Oil Spill Liability. Setting federal oil spill liability limits, authorizing clean-up and compensation payments for costs exceeding those limits, and establishing spill-prevention and spill-response requirements. Yes. Passed 375-5.

(351) H.R. 2939. FY 1990 Foreign Operations Appropriations. Agreeing to the Senate amendment providing $15 million to the U.N. Population Fund on the condition that the funds not be used to support family planning programs in China. Yes. Passed 244-178.

(358) H.R. 3660. Government Pay and Ethics Package. Phasing out honoraria and upgrading ethics rules for members of the House, and increasing salaries for members of the House and high-level officials in the executive and judicial branches. Yes. Passed 252-174.

(364) H.R. 3566. FY 1990 Labor-HHS Appropriations. Agreeing with the Senate amendment rewriting certain restrictions on telephone "dial-a-porn" operations which were declared unconstitutional by the Supreme Court in 1989. Yes. Passed 402-0.

(368) H.R. 3532. Civil Rights Commission Reauthorization. Reauthorizing the U.S. Commission on Civil Rights until Sept. 30, 1991. Yes. Passed 389-0.

(370) H.R. 2712. Chinese Immigration Status. Granting Chinese students living in the U.S. since June 5, 1989, a four-year waiver of the visa requirement that they return to China for two years before seeking immigrant status in the U.S. Yes. Passed 403-0.

(371) H.R. 3607. Catastrophic Revision. Repealing all Medicare benefits and premiums of the 1988 Medicare Catastrophic Coverage Act, but retaining Medicaid provisions. Yes. Passed 349-57.

(374) H.R. 3743. FY 1990 Foreign Operations Appropriations. Reworking the bill to address concerns that caused President Bush to initially veto it; providing $14.6 billion in FY 1990 for foreign aid programs. Yes. Passed 310-107.

(375) H. Con. Res. 236. Violence in El Salvador. Condemning violence in El Salvador, including the murder of six priests and two others, and stating that continued U.S. aid would be influenced by satisfactory conclusion of the murder investigations. Yes. Passed 409-3.

(377) H.J. Res. 448. FY 1990 Supplemental Appropriations. Providing $100 million in FY 1990 for the Title XX social services block grant program. Yes. Passed 354-46.

(379) H.R. 3299. FY 1990 Budget Reconciliation. Approving program cuts and revenue increases needed to bring the FY 1990 deficit under the $110 billion limit set by the Gramm-Rudman law. Yes. Passed. 272-128.

(11) H.R. 2190. Voter Registration. Easing voter registration procedures nationally by requiring states to make applications available in certain public offices and provide for simultaneous application for registration when a citizen acquires, renews or changes the address on a driver's license. Yes. Passed 289-132.

(12) H. Con. Res. 262. Panama Invasion. Expressing praise for the U.S. invasion of Panama and sadness over resulting deaths; commending the president for recalling troops; and urging continued efforts to promote democracy in Panama. Yes. Passed 389-26.

(21) H.R. 1243. Metal Casting Competitiveness. Requiring the Secretary of Energy to establish three metal casting competitiveness centers. Yes. Passed 382-27.

(22) H.R. 1231. Eastern Airlines Strike Emergency Board. Overriding President Bush's veto of the bill creating a commission to look into and report to Congress on the Eastern Airlines strike. Yes. Failed 261-160 ( 2/3 vote required for passage.)

(40) H.R. 3581. Rural Economic Development Act. Establishing a Rural Development Administration to coordinate federal rural development programs, revise the dissemination of rural development loans and grants, and permit the Secretary of Agriculture to transfer funds among various federal loan and grant programs at the request of states. Yes. Passed 360-45.

(43) H.R. 2209. Soybean Promotion Act. Enabling soybean producers to establish and fund a program to promote, conduct research and provide consumer information on soybeans. Yes. Passed 416-9.

(45) H.R. 3386. Garbage Backhauling. Requiring the Department of Transportation to establish regulations governing the "backhauling" of solid waste and hazardous materials in the same trucks used to transport food. Yes. Passed 410-15.

(50) H.R. 3847. Department of Environmental Protection. Creating a Department of Environmental Protection; limiting the contracting out of "inherently governmental" functions; and mandating several specific departmental offices within the new Department. Yes. Passed 371-55.

(55) H.R. 3. Child Care. Amendment allowing rather than requiring states to have a child-care voucher program. Yes. Failed 182-243.

(60) H.R. 3. Child Care. Improving programs which provide federal assistance for child care and increasing the earned income tax credit for low-income working families. Yes. Passed 265-145.

(65) H.R. 4404. FY 1990 Supplemental Appropriations. Providing $2.4 billion in additional funds for FY 1990 programs, including $870 million in aid to Panama, Nicaragua and other foreign

nations; and rescinding $1.8 billion in FY 1990 defense spending to offset new appropriations in the bill. No. Passed 362-59.

(67) H. Con Res. 289. Lithuanian Independence. Expressing support for Lithuanian independence and calling on President Bush to plan for and take steps to "normalize diplomatic relations" with the new government there. Yes. Passed 416-3.

(68) H.R. 2015. Public Works and Economic Development Act. Authorizing in each year, FY 1991-93, $276 million for the Economic Development Administration and $185 million for the Appalachian Regional Commission. Yes. Passed 340-82.

(80) H.R. 3848. Money Laundering. Amendment suggesting uniform state guidelines limiting what the fee check-cashing businesses could charge to no more than $8 or 1.5 percent of the value of the check, whichever is less. Yes. Passed 207-200.

(82) H.R. 3848. Money Laundering. Expanding programs to discourage participation by financial institutions in money-laundering schemes. Yes. Passed 406-0.

(86) H.R. 743. Negotiated Rulemaking. Establishing procedures for federal agencies to use to negotiate regulations with interested parties before they are promulgated, thereby reducing the potential for future lawsuits. Yes. Passed 411-0.

(89) H. Con. Res. 310. FY 1991 Budget Resolution. Establishing FY 1991 budget levels of $1.388 trillion in budget authority and $1.239 trillion in outlays, and including a deficit of $63.75 billion. Yes. Passed 218-208.

(94) H.R. 4380. Super Collider Authorization. Authorizing $5 billion in federal funds for the construction and development of the superconducting super collider. No. Passed 309-109.

(107) H.R. 770. Family and Medical Leave Act. Requiring private employers with 50 or more employees to provide up to 12 weeks per year of unpaid leave to workers to care for a new child or seriously ill child, parent or spouse, or for the employee's own serious illness; and requiring the federal government to provide up to 18 weeks every two years for family leave and 15 weeks every year for medical leave. Yes. Passed 237-187.

(111) H.R. 4151. FY 1991-94 Human Services (Head Start) Reauthorization. Authorizing $2.9 billion in FY 1991 and $19.6 billion in each year, FY 1992-94, to fund the Follow Through Act, the Head Start Act, the Community Services Block Grant Act and other low-income assistance programs. Yes. Passed 404-14.

(116) H.R. 2273. Americans With Disabilities Act. Amendment permitting small businesses an extended phase-in period for the public accommodation portions of the bill. Yes. Passed 401-0.

(120) H.R. 2273. Americans With Disabilities Act. Amendment exempting small city mass transit systems from requirements that all public transportation be accessible to handicapped individuals as long as the system provides alternative transportation that meets the approval of everyone it serves. Yes. Failed. 148-266.

(123) H.R. 2273. Americans With Disabilities Act. Prohibiting discrimination against disabled individuals in access to public facilities and mass transportation, employment and telecommunications services. Yes Passed 403-20.

(127) H.R. 4636. FY 1990 Foreign Aid Supplemental Authorizations. Amendment cutting 50 percent of El Salvador's military assistance in FY 1990-1991 due to congressional unhappiness with the Salvadoran government's response to concerns about the murders of six priests and two others. Yes. Passed 250-163.

[*E1801] (137) H.R. 3030. Clean Air Act Reauthorization. Rewriting the Clean Air Act to achieve specified air quality standards, mandate emission reductions in motor vehicles, reduce acid rain, phase out production and use of chlorofluorocarbons (CFCs), and other provisions to improve the nation's air quality. Yes. Passed 401-21.

(138) H.R. 4404. FY 1990 Supplemental Appropriations. Providing $4.3 billion in additional budget authority in FY 1990, including $3.5 billion for domestic programs and $885 million for foreign aid, and rescinding $2 billion in defense spending to offset the spending in the bill. No. Passed 308-108.

## xiii. 135 Cong Rec H 8919: Civil Rights Commission Reauthorization Act of 1989

FOCUS - 15 of 28 DOCUMENTS

Congressional Record -- House

Friday, November 17, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8919*

REFERENCE: Vol. 135 No. 162

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. EDWARDS of California; Mr. FISH; Mr. GEKAS; Mr. KASTENMEIER; Mr. SENSENBRENNER; Mr. WALKER

TEXT: [*H8919] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3532) to extend the United States Commission on Civil Rights.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975 et seq.) is amended --

(1) in section 7 (42 U.S.C. 1975e), by striking "1989" and inserting "1991"; and

(2) in section 8 (42 U.S.C. 1975f), by striking "six years after its date of enactment" and inserting "on September 30, 1991".

The SPEAKER pro tempore. Is a second demanded?

Mr. SENSENBRENNER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Edwards] will be recognized for 20 minutes, and the gentleman from Wisconsin [Mr. Sensenbrenner] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, yesterday the Senate reached a compromise with the White House on the bill passed by the House earlier in the week, H.R. 3532, a bill to extend the U.S. Commission on Civil Rights. The compromise is now before us.

In the compromise, the Commission on Civil Rights will be extended for 22 months, through the end of fiscal year 1991, until September 30, 1991. Rather than extending the Commission for 6 months, as in the House-passed bill, and examining the options for longer extension, the Commission will continue for 22 months.

Although 22 months is far longer than I would have preferred, in the spirit of compromise I am willing to accept it. I regret, however, that given that the recess is almost upon us, the House will not have time to carefully examine this extension.

By adopting this compromise, the Commission will have the opportunity to once again become strong, independent, credible, and effective. The President will have the opportunity to fulfill his promise to revitalize the troubled Civil Rights Commission, by making responsible appointments to the Commission.

The Commission has the opportunity to regain its respectability by conducting public hearings and issuing reports on the major civil rights issues that affect our Nation, instead of shooting personal opinions from the collective hip. In the next 22 months, I hope the Commission will produce factual reports which will help Congress and the Executive develop civil rights law and policy.

The Commission also has the opportunity to begin again an examination of how well civil rights laws are being enforced. This important task was not continued over the last 6 years, a time of great change on the civil rights front.

The Commission has the opportunity to fully utilize its State Advisory Committees [SAC's]. The SAC's, composed of volunteers in every State, are really the eyes and ears of the Commission throughout the country. They should be supported by a strong regional office network, and their advice should be respectfully considered by the Commission.

By appointing persons of stature to the Commission, with an interest and expertise in civil rights, the President can go a long way toward healing the wounds of the last 6 painful years. The new Chair and Vice Chair should reflect the new spirit promised by the President.

The Senate compromise also drops the section concerning appointment of the Staff Director. Under the compromise the President will continue to have the authority to appoint the Staff Director.

The Commission has been without a permanent Staff Director since 1986. As the critical first step toward revitalizing the Commission, the President should appoint an independent and nonpolitical permanent Staff Director without delay.

The Staff Director should quickly move to address the serious financial and administrative management problems found by the General Accounting Office in 1986, and never addressed by the Commission.

Most importantlly, the Staff Director must remain above the partisan fray. During the last 6 years, the Staff Directors have unfortunately viewed themselves as part of the administration, as agents of the President, rather than being independent and responsible to the Commission.

In order to maintain the independence necessary for this Commission, the Staff Director should not be beholden to the President, even though a Presidential appointee. Instead, the Staff Director should be responsible to all members of the Commission, no matter who appointed them.

Our Nation needs a strong, independent, credible and effective Commission on Civil Rights. Let us hope this compromise will enable the Commission to "launch a renewed civil rights mission," as President Bush promised in June.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. Kastenmeier].

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to compliment my chairman, the gentleman from California [Mr. Edwards], for his work on this bill. I think the compromise is a fair one and perhaps a very fortuitous result in terms of enabling the Congress to come to an agreeable result. The gentleman from California has done a great deal of work on this, and we look forward to the next 22 months under his leadership to legislate further with respect to perfecting the commission.

Mr. EDWARDS of California. Mr. Speaker, if the gentleman will yield, I thank the gentleman from Wisconsin [Mr. Kastenmeier] for his gracious words. The gentleman from Wisconsin [Mr. Kastenmeier] is a long-time member of the Subcommittee on Civil and Constitutional Rights and is one of the real, true heroes of the civil rights movement in the United States. I am grateful for his support, and I trust that he will be a long-time member of the subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of the motion to suspend the rules offered by the gentleman from California [Mr. Edwards].

Mr. Speaker, the Senate amendments upon which this motion to concur is based basically extends the life of the U.S. Commission on Civil rights for 22 months from November 30, 1989, until the end of the fiscal year, 1991, which is September 30 of that year. This motion is different than the bill which was passed by the [*H8920] House earlier this week in two significant respects.

First, the extension is for 22 months rather than 6 months and, second, the power to appoint the staff director, which the House vested in the Commission itself, is again returned to the President with the concurrence of a majority of the Commission.

There is no change in this legislation, in the Commission's statutory mandate, and while I would have preferred a 1-day gap so that the present Commission would have gone out of business for a day, thus allowing a complete housecleaning of this Commission that has not fulfilled its statutory mandate, in the spirit of compromise, I am willing to go along with this motion to suspend the rules.

Mr. Speaker, I recognize that without a 1-day gap, four of the Members of the present Commission will hold over throughout the 22-month period, including two Commissioners who have been at the center of the personality disputes that have dragged this Commission into disrepute. It is my hope that these Commissioners, as well as the four new appointees, two by the President, one by the Senator from Kansas [Mr. Dole], and the other by the gentleman from Illinois [Mr. Michel], will be able to exert a leveling influence on the Commission as a whole so that the Commission can get back on track and do the worthwhile work that it was noted for doing for years until the present personality conflicts seemed to go to the fore.

However, if this hope, which I know is shared by all of us who are supporting this motion to suspend the rules, is in vain, and this newly restored Commission ends up spending the next 22 months in the same type of personality arguments that the present Commission has spent the last 4 or 5 years engaging in, I wish to serve notice on the House now that this will be the last time I will support an extension of the Civil Rights Commission.

It seems to me that the Commission will be on probation this next 22 months. If it does worthwhile work, then it ought to be extended. If it falls into the same rut it has been in for the past several years, then we should allow it to die a peaceful death at the end of the fiscal year 1991.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Speaker, I will be brief. We bring to the House this evening a classic compromise fashioned by people of good will, agreed to by the administration and our colleagues in the majority party.

Mr. Speaker, I think congratulations are in order to Mr. Roger Porter of the President's Domestic Council, the chairman, the gentleman from California [Mr. Edwards], and the bipartisan members of the Senate Judiciary Committee, Senators Simon, Thurmond, Kennedy, and Hatch, as well as to the Leadership Conference on Civil Rights.

As the House has been informed, the objections that many Members had to the legislation earlier this week have been resolved, and I hope we will have a nearly unanimous vote in favor of the reauthorization.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Gekas].

(Mr. GEKAS asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, Members of the House, I, too, rise to support the legislation before us and proclaim, as I have anytime this issue has arisen, that I am a supporter of the basic concept of, and the institution of, the U.S. Commission on Civil Rights. But I support this piece of legislation that renews it for a 22-month period with no enthusiasm whatsoever.

I still sense that the majority in this issue, since I have been a Member of the Congress, has been in a thwarting mood, a mood to thwart President Reagan, first, and now President Bush in the power of appointment that rests exclusively at their desks. I saw in their effort here originally to extend this for only 6 months and now 22 months a cynical effort, and perhaps it is just the way I look at things, to further curb that powerful position of appointive power that the President of the United States solely holds and which he should hold solely. But because of the 22-month extension and because the White House now seems to have come to some compromise level in the present legislation, I, too, will support this new venture into the new life of the Commission on Civil Rights.

I simply want to know and will be told, I am sure, by events as they unfold if we are going to forever see the Congress of the United States interfering in its own kind of gentle and kind way with the prerogatives of the President of the United States.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to congratulate the gentleman from California and the gentleman from Wisconsin for having worked this bill out. There was some element of controversy that surrounded the passage of the bill the other day on the House floor. That controversy arose more out of procedure than it did out of the fundamental nature of the work of the Civil Rights Commission, and I think it is important to understand the gentleman from California and the gentleman from Wisconsin have worked out their differences and worked out any differences with the White House.

We do have a bill before us this evening that, I think, most of the Members of the body can feel comfortable in supporting. I would certainly urge them to support it at this point.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. Walker] for his gracious words. The other gentleman from Pennsylvania [Mr. Gekas] perhaps did not use words very accurately when he said that we were cynical on this side. We are not. Mr. Speaker, the subcommittee that I chair, ably assisted by the gentleman from Wisconsin [Mr. Sensenbrenner] and the other members of the minority, has a very large responsibility insofar as the Civil Rights Commission is concerned. We authorize the money that is appropriated for the Civil Rights Commission, to pay the salaries of its staff. We expect them to do a good job, a businesslike job, and not a political job.

The civil rights laws are very clear. They are a very proud accomplishment of this country. They make us stand tall in the world. We want a Civil Rights Commission that looks good too, and reflects the value of our civil rights laws.

I have every confidence now that President Bush is serious about getting us some good people. as the gentleman from Wisconsin [Mr. Sensenbrenner] said, they are on probation at the Commission for the next 22 months, because if they do not do a good job, they jeopardize their future existence. at the end of this 22 months, if they are not doing a good job, perhaps the Civil Rights Commission should be no longer.

I thank my colleagues for their cooperation, and I thank the gentleman from the White House, Roger Porter, who worked with us. I especially thank the gentleman from New York [Mr. Fish], who was a great help in mediating the minor disputes that we had with not only the President's people, but among ourselves.

But we have reached an amicable agreement, Mr. Speaker, and I am very pleased. I wish the Civil Rights Commission great success in the coming 22 months.

I also know the greetings of our chairman, Mr. Jack Brooks of Texas, go with our good will toward the Commission. As Members know, the distinguished chairman has been ill for the past few weeks, but it is with great joy that I announce that he is making good progress. He is keeping an eye on everything that we are doing here, and I am sure that he will be back with us in full bloom next year.

[*H8921] Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Williams). The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and concur in the Senate amendment to H.R. 3532.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were -- yeas 389, nays 0, not voting 44, as follows:

(See Roll No. 368 in the ROLL segment.)

Mr. NAGLE changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ROLL:

[Roll No. 368]

YEAS -- 389

| | | |
|---|---|---|
| Ackerman | Akaka | Alexander |
| Anderson | Andrews | Anthony |
| Applegate | Archer | Armey |
| Atkins | AuCoin | Baker |
| Ballenger | Barnard | Bartlett |
| Bateman | Bates | Beilenson |
| Bennett | Bentley | Bereuter |
| Berman | Bevill | Bilbray |
| Bilirakis | Bliley | Boehlert |
| Boggs | Borski | Bosco |
| Boucher | Boxer | Brennan |
| Broomfield | Browder | Brown (CA) |
| Brown (CO) | Bruce | Buechner |
| Bunning | Burton | Byron |
| Callahan | Campbell (CA) | Cardin |
| Carper | Carr | Chandler |
| Chapman | Clarke | Clay |
| Clement | Clinger | Coble |
| Coleman (MO) | Coleman (TX) | Collins |
| Combest | Condit | Conte |
| Conyers | Cooper | Costello |
| Coughlin | Courter | Cox |
| Coyne | Craig | Crockett |
| Dannemeyer | Darden | Davis |
| de la Garza | DeFazio | DeLay |
| Dellums | Derrick | DeWine |
| Dickinson | Dicks | Dingell |
| Dixon | Dorgan (ND) | Dornan (CA) |
| Douglas | Downey | Dreier |
| Duncan | Durbin | Dwyer |
| Dymally | Dyson | Eckart |
| Edwards (CA) | Edwards (OK) | Emerson |
| Engel | English | Erdreich |
| Espy | Evans | Fascell |
| Fawell | Fazio | Feighan |
| Fields | Fish | Flake |
| Flippo | Foglietta | Ford (MI) |
| Frank | Frenzel | Frost |
| Gallo | Gaydos | Gejdenson |
| Gekas | Geren | Gibbons |
| Gillmor | Gilman | Gingrich |
| Glickman | Gonzalez | Goodling |
| Gordon | Goss | Gradison |

| | | |
|---|---|---|
| Grandy | Grant | Gray |
| Green | Guarini | Gunderson |
| Hall (OH) | Hall (TX) | Hamilton |
| Hammerschmidt | Hancock | Hansen |
| Harris | Hastert | Hatcher |
| Hawkins | Hayes (IL) | Hayes (LA) |
| Hefley | Hefner | Henry |
| Herger | Hertel | Hiler |
| Hoagland | Hochbrueckner | Holloway |
| Hopkins | Horton | Houghton |
| Hoyer | Hubbard | Huckaby |
| Hughes | Hunter | Hyde |
| Inhofe | Ireland | Jacobs |
| James | Johnson (CT) | Johnson (SD) |
| Johnston | Jones (GA) | Jones (NC) |
| Jontz | Kanjorski | Kaptur |
| Kasich | Kastenmeier | Kennedy |
| Kennelly | Kildee | Kleczka |
| Kolbe | Kolter | Kostmayer |
| Kyl | LaFalce | Lagomarsino |
| Lancaster | Laughlin | Leach (IA) |
| Leath (TX) | Lehman (CA) | Lent |
| Levin (MI) | Lewis (CA) | Lewis (FL) |
| Lewis (GA) | Lightfoot | Livingston |
| Lloyd | Long | Lowery (CA) |
| Lowey (NY) | Luken, Thomas | Lukens, Donald |
| Machtley | Madigan | Manton |
| Markey | Marlenee | Martin (IL) |
| Martin (NY) | Martinez | Matsui |
| Mavroules | Mazzoli | McCandless |
| McCloskey | McCollum | McCurdy |
| McDermott | McEwen | McGrath |
| McHugh | McMillan (NC) | McMillen (MD) |
| McNulty | Meyers | Mfume |
| Michel | Miller (CA) | Miller (OH) |
| Miller (WA) | Mineta | Moakley |
| Mollohan | Montgomery | Moorhead |
| Morella | Morrison (CT) | Morrison (WA) |
| Mrazek | Murphy | Murtha |
| Myers | Nagle | Natcher |
| Neal (MA) | Nielson | Nowak |
| Oakar | Oberstar | Obey |
| Olin | Ortiz | Owens (NY) |
| Owens (UT) | Oxley | Packard |
| Pallone | Panetta | Parker |
| Parris | Pashayan | Patterson |

| | | |
|---|---|---|
| Paxon | Payne (NJ) | Payne (VA) |
| Pease | Pelosi | Penny |
| Perkins | Petri | Pickett |
| Pickle | Porter | Poshard |
| Price | Pursell | Rangel |
| Ravenel | Ray | Regula |
| Rhodes | Richardson | Rinaldo |
| Ritter | Roberts | Robinson |
| Roe | Rogers | Rohrabacher |
| Ros-Lehtinen | Rose | Rostenkowski |
| Roth | Roukema | Rowland (GA) |
| Roybal | Sabo | Saiki |
| Sangmeister | Sarpalius | Savage |
| Sawyer | Saxton | Schaefer |
| Scheuer | Schiff | Schneider |
| Schroeder | Schuette | Schulze |
| Schumer | Sensenbrenner | Shaw |
| Shays | Shumway | Sikorski |
| Sisisky | Skaggs | Skeen |
| Slattery | Slaughter (NY) | Slaughter (VA) |
| Smith (FL) | Smith (IA) | Smith (NE) |
| Smith (NJ) | Smith (TX) | Smith (VT) |
| Smith, Robert (OR) | Snowe | Solarz |
| Solomon | Spence | Staggers |
| Stallings | Stangeland | Stark |
| Stearns | Stenholm | Stokes |
| Studds | Stump | Sundquist |
| Swift | Tallon | Tanner |
| Tauke | Tauzin | Taylor |
| Thomas (CA) | Thomas (GA) | Thomas (WY) |
| Torres | Towns | Traficant |
| Traxler | Udall | Unsoeld |
| Upton | Valentine | Vander Jagt |
| Vento | Volkmer | Vucanovich |
| Walgren | Walker | Walsh |
| Waxman | Weber | Weiss |
| Weldon | Wheat | Whittaker |
| Whitten | Williams | Wilson |
| Wolf | Wolpe | Wyden |
| Wylie | Yates | Yatron |
| Young (AK) | Young (FL) | |

NAYS -- 0

NOT VOTING -- 44

| | | |
|---|---|---|
| Annunzio | Aspin | Barton |
| Bonior | Brooks | Bryant |
| Bustamante | Campbell (CO) | Crane |
| Donnelly | Early | Florio |
| Ford (TN) | Gallegly | Garcia |
| Gephardt | Hutto | Jenkins |
| Lantos | Lehman (FL) | Levine (CA) |
| Lipinski | McCrery | McDade |
| Molinari | Moody | Neal (NC) |
| Nelson | Quillen | Rahall |
| Ridge | Rowland (CT) | Russo |
| Sharp | Shuster | Skelton |
| Smith, Denny (OR) | Smith, Robert (NH) | Spratt |
| Synar | Torricelli | Visclosky |
| Watkins | Wise | |

## xiv. 135 Cong Rec S 15920: U.S. Civil Rights Commission Reauthorization

FOCUS - 16 of 28 DOCUMENTS

Congressional Record -- Senate

Thursday, November 16, 1989;
(Legislative day of Monday, November 6, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 15920*

REFERENCE: Vol. 135 No. 161

TITLE: U.S. CIVIL RIGHTS COMMISSION REAUTHORIZATION

SPEAKER: Mr. FORD; Mr. HATCH; Mr. SIMON

TEXT: [*S15920] Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1891, the U.S. Civil Rights Commission reauthorization bill now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1891) to extend the United States Commission on Civil Rights, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMON. Mr. President, I am pleased to announce that we have reached bipartisan agreement to extend the charter of the U.S. Commission on Civil Rights, which is due to expire on November 30, for 22 months. Joining me as cosponsors of this agreement are my good friends and distinguished colleagues from the Judiciary Committee, Senators Hatch, Kennedy, Thurmond, Biden, and Specter.

The U.S. Commission on Civil Rights was created in 1957 by President Eisenhower, and for many years, it enjoyed an excellent reputation as a nonpartisan, independent agency. The Commission attracted many distinguished Americans to its service, and its landmark studies made important contributions to our Nation's progress in the area of civil rights.

In the recent past, however, the Commission has suffered under a series of partisan appointments and a loss of credibility. As a result, it has been difficult to reach a consensus on what to do when the Commission expires at the end of this month.

Earlier this year I introduced S. 1714, which would have created a new, reinvigorated Civil Rights Commission after letting the old one expire. While there has been considerable interest and support for that proposal, time has proved too short for it to be enacted. I subsequently introduced a 6-month extension bill, S. 1801, but the administration favored 6 years. With the help of Senator Hatch, we have worked out a compromise to allow the Commission to do its work through fiscal year 1991.

During this time, the terms of four Commissioners will expire. The President has two of those appointments. I am hopeful that he will use this opportunity to reaffirm his commitment to civil rights and appoint distinguished individuals who can help restore the Civil Rights Commission as an independent agency dedicated to advancing the cause of equality.

I want to thank Senator Hatch for his valuable assistance, and ask unanimous consent that the full text of the bill be printed in the Record at this point.

Mr. HATCH. Mr. President, I am pleased to join Senator Simon as principal cosponsor of the Civil Rights Commission Reauthorization Act of 1989. This bill reauthorizes the U.S. Commission on Civil Rights until the end of fiscal year 1991. No changes are made to the language of the authorizing statute.

Earlier this year, I introduced S. 1800, which would reauthorize the Commission for 6 years. The President desired a 6-year reauthorization. Senator Simon introduced S. 1801, which reauthorized the Commission for 6 months. We have made a reasonable compromise that will leave the Commission to do its work. The administration has been heavily involved in working out the compromise.

I want to thank Senator Simon and Deborah Leavy of his staff, for their sincere efforts to save the Civil Rights Commission. Most of all, I want to thank President Bush and the administration for their strong support for the reauthorization of a meaningful Civil Rights Commission. The President is a strong supporter of equal opportunity for all Americans, and so am I. The administration's effort was instrumental in preserving the Commission.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3532, now at the desk, and that all after the enacting clause be stricken, that the text of S. 1891 be inserted in lieu thereof, that the bill be read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

## xv. 135 Cong Rec E 384: H.R. 3532, The Civil Rights Commission Reauthorization Act of 1989

FOCUS - 17 of 28 DOCUMENTS

Congressional Record -- Extension of Remarks

Thursday, November 16, 1989

101st Cong. 1st Sess.

*135 Cong Rec E 3841*

REFERENCE: Vol. 135 No. 161

TITLE: H.R. 3532, THE CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: HON. WILLIAM E. DANNEMEYER OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the House on the floor.

[*E3841] MR. DANNEMEYER. MR. SPEAKER, THE DEBATE OVER H.R. 3532 AND OVER THE FUTURE OF THE U.S. COMMISSION ON CIVIL RIGHTS IS NOTHING LESS THAN A BATTLE FOR THE SOUL OF THE BUSH ADMINISTRATION ON CIVIL RIGHTS ISSUES.

H.R. 3532 WOULD EXTEND THE U.S. COMMISSION ON CIVIL RIGHTS FOR A 6-MONTH PERIOD, DURING WHICH TIME THE CIVIL RIGHTS ACTIVISTS HERE IN WASHINGTON WILL DELIVER AN ULTIMATUM TO PRESIDENT BUSH. THEY WILL LOOK HIM IN THE EYE AND SAY: EITHER YOU ACCEPT OUR VIEW ON A RACE-CONSCIOUS CIVIL RIGHTS AGENDA, COMPLETE WITH QUOTAS AND RESULTS-ORIENTED LEGISLATION, OR WE WILL OPPOSE YOUR EFFORTS IN THIS AREA, NO MATTER HOW REASONABLE. WE WILL OPPOSE YOUR NOMINEES TO IMPORTANT CIVIL RIGHTS POSTS IN THE ADMINISTRATION; WE WILL OPPOSE YOUR LEGISLATION INITIATIVES; AND WE WILL OPPOSE YOUR REGULATORY INTERPRETATIONS OF RECENT SUPREME COURT DECISIONS.

IN SHORT, IF THE BUSH ADMINISTRATION INSISTS THAT THE APPROPRIATE COURSE IS TO ADHERE TO THE COLOR-BLIND POLICY ENVISONED BY THE LATE SENATOR HUBERT HUMPHREY, THESE CIVL RIGHTS ACTIVISTS WILL SABOTAGE THE PRESIDENT'S CIVIL RIGHTS AGENDA.

THE 6-MONTH REAUTHORIZATION IN H.R. 3532 IS INAPPROPRIATE BECAUSE IT WOULD HOLD THE COMMISSION HOSTAGE TO POLITICAL CONSIDERATIONS DURING THIS PERIOD AND PROLONG THE AGONY, THE BICKERING, AND THE INTOLERANCE OF THE CURRENT COMMISSION. A 6-YEAR REAUTHORIZATION, HOWEVER, WOULD ENABLE THE ADMINISTRATION TO ATTRACT TOP QUALITY CANDIDATES FOR THE OPEN SLOTS AND ADDRESS THE EMERGING ISSUES OF THE NINETIES, INCLUDING THE DISCRIMINATION PRACTICED BY UNIVERSITIES ACROSS AMERICA AGAINST HIGHLY QUALIFIED ASIAN-AMERICAN STUDENTS.

THE RECENT ATTEMPTS TO SILENCE THE OUTSPOKEN FORMER CHAIRMAN OF THE COMMISSION, WILLIAM ALLEN, CALL TO MIND SOME OBSERVATIONS BY FORMER JUDGE ROBERT BORK IN HIS EXCELLENT NEW BOOK, "THE TEMPTING OF AMERICA." DESCRIBING THE TACTICS OF THE RADICAL LEFT TO INFLUENCE THE COURTS ON CIVIL RIGHTS MATTERS, BORK OBSERVES:

THE AMERICAN LEFT REGULARLY BYPASSES RATIONAL ARGUMENT TO CHALLENGE THE MORAL CHARACTER OF THOSE WITH WHOM IT HAS SUBSTANTIVE DIFFERENCES. THE TECHNIQUES IS ONE OF INTIMIDATION AND IT HAS SOMETIMES BEEN AT LEAST PARTIALLY EFFECTIVE WITH COURTS THAT WERE SENSITIVE ABOUT THEIR IMAGE WITH THE PRESS AND IN PUBLIC PERCEPTION.

SUCH IS THE STRATEGY TO PREVENT FORMER CHAIRMAN ALLEN FROM EXPRESSING HIS OPINION ON A WIDE RANGE OF MATTERS AFFECTING THE CIVIL RIGHTS OF ALL AMERICANS. ALLEN, WITH HIS ENORMOUS INTELLECT AND HIS RARE GIFT FOR ELOQUENCE, POSES A DIFFICULT TARGET FOR THE IDEOLOGUES ON THE LEFT. BUT, UNFORTUNATELY, A CONCERTED AND WELL-ORGANIZED CAMPAIGN OF INTIMIDATION TO PREVENT HIM FROM AIRING HIS VIEWS ULTIMATELY PREVAILED, FORCING HIM TO RELINQUISH HIS POSITION AS CHAIRMAN, ALTHOUGH HE REMAINS ON THE COMMISSION.

IF THIS BILL PASSES, PRESIDENT BUSH FACES A CHOICE. HE CAN KOWTOW TO THE LEFT AND NOMINATE COMMISSIONERS WHO WILL ADHERE TO THE LEFTIST PARTY LINE OF GROUP ENTITLEMENTS AND RESULTS-ORIENTED LEGISLATION, OR HE CAN STAND TALL AND NOMINATE MEN AND WOMEN LIKE FORMER CHAIRMAN ALLEN, WHO WILL ADVOCATE LAWS AND POLICIES THAT PROMOTE A SOCIETY WHERE NO PERSON WILL BE JUDGED ON THE BASIS OF HIS OR HER MEMBERSHIP IN A PARTICULAR GROUP, AND WHERE MERIT WILL BE THE FINAL ARBITER OF THE FRUITS OF OUR SOCIETY, INCLUDING HIRINGS, PROMOTIONS, AND ADMITTANCE TO EDUCATIONAL INSTITUTIONS.

## xvi. 135 Cong Rec S 15750: Civil Rights Commission Reauthorization

FOCUS - 18 of 28 DOCUMENTS

Congressional Record -- Senate

Wednesday, November 15, 1989;
(Legislative day of Monday, November 6, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 15750*

REFERENCE: Vol. 135 No. 160; Continuation of Senate Proceedings of November 15, 1989, Issue No. 160; and Proceedings of November 16, 1989, Issue No. 161

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION

SPEAKER: Mr. CRANSTON; Mr. LOTT

TEXT: [*S15750] Mr. CRANSTON. Mr. President, I understand that the Senate has received from the House H.R. 3532, the Civil Rights Commission reauthorization bill. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. CRANSTON, Mr. President, I ask unanimous consent that the bill be placed on the calendar.

Mr. LOTT. Mr. President, I object on behalf of the minority.

Mr. CRANSTON. Mr. President, I then ask the bill be read for the first time.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3532) to extend the United States Commission on Civil Rights.

Mr. CRANSTON. Mr. President, I ask the bill be read for a second time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LOTT. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. CRANSTON. The bill will now lay on the table until the next legislative day?

The ACTING PRESIDENT pro tempore. The Senator is correct.

## xvii. 135 Cong Rec H 8637: The Civil Rights Commission Reauthorization Act of 1989

FOCUS - 19 of 28 DOCUMENTS

Congressional Record -- House

Wednesday, November 15, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8637*

REFERENCE: Vol. 135 No. 160

TITLE: THE CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. GEKAS

TEXT: [*H8637] The SPEAKER pro tempore. (Mrs. Schroeder). The unfinished business is the question of suspending the rules and passing the bill, H.R. 3532.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Edwards], that the House suspend the rules and pass the bill, H.R. 3532, on which the yeas and nays are ordered.

PARLIAMENTARY INQUIRIES

Mr. GEKAS. Madam Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. GEKAS. Madam Speaker, when the present bill was passed out of the Judiciary Committee, it was in one form, and that was the form in which the original motion to have the vote on suspension was created. My point of parliamentary inquiry is this: How does the House now know that the bill that is about to be voted on is substantially different from that which was passed by the Judiciary Committee? How do we explain to the House that that is so?

The SPEAKER pro tempore. The gentleman can look at yesterday's Record. It carries a copy of the bill in the form in which the motion was made, and all Members have had 1 day to reflect upon that.

Mr. GEKAS. Madam Speaker, I have a further parliamentary inquiry.

What I really want to know is, why is it that the Clerk cannot read the bill as it now is constituted prior to this vote?

The SPEAKER pro tempore. Without objection, the Clerk will read the bill.

Mr. GEKAS. I would like to hear that, Madam Speaker.

The SPEAKER pro tempore. Is the gentleman making a request that the Clerk read the bill?

Mr. GEKAS. Yes, Madam Speaker, I am.

The SPEAKER pro tempore. Without objection, the Clerk will read the bill.

There was no objection.

The Clerk read the bill, as follows:

H.R. 3532

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "The Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 is amended --

(1) in section 7, by striking "1989" and inserting "1990"; and

(2) in section 8, by striking "six years after its date of enactment" and inserting "on May 31, 1990".

SEC. 3. STAFF DIRECTOR.

Section 6(a)(1) of the United States commission on Civil Rights Act of 1983 is amended by striking "the President with the concurrence of a majority of".

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and pass the bill, H.R. 3532, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were -- yeas 278, nays 135, not voting 20, as follows:

(See Roll No. 354 in the ROLL segment.)

[*H8638] The Clerk announced the following pairs:

On this vote:

Mr. Kleczka for, and Mrs. Morella with Mr. McEwen against.

Mr. BUECHNER, Mr. PASHAYAN, and Mrs. MEYERS of Kansas changed their vote from "yea" to "nay."

Mr. KASICH and Mr. HENRY changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ROLL:

[Roll No. 354]

YEAS -- 278

| | | |
|---|---|---|
| Ackerman | Akaka | Alexander |
| Anderson | Andrews | Annunzio |
| Anthony | Applegate | Aspin |
| Atkins | AuCoin | Barnard |
| Bates | Beilenson | Bennett |
| Berman | Bevill | Bilbray |
| Boggs | Bonior | Borski |
| Bosco | Boucher | Boxer |
| Brennan | Browder | Brown (CA) |
| Brown (CO) | Bruce | Bustamante |
| Byron | Campbell (CO) | Cardin |
| Carper | Carr | Chapman |
| Clarke | Clay | Clement |
| Coleman (TX) | Collins | Condit |
| Conte | Conyers | Cooper |
| Costello | Coughlin | Courter |
| Coyne | Crockett | Darden |
| de la Garza | DeFazio | Dellums |
| Derrick | Dicks | Dingell |
| Dixon | Donnelly | Dorgan (ND) |
| Downey | Duncan | Durbin |
| Dwyer | Dymally | Dyson |
| Early | Eckart | Edwards (CA) |
| Engel | English | Erdreich |
| Espy | Evans | Fascell |
| Fazio | Feighan | Fish |
| Flake | Flippo | Florio |
| Foglietta | Ford (MI) | Ford (TN) |
| Frank | Frost | Gaydos |
| Gejdenson | Gephardt | Geren |
| Gibbons | Gilman | Glickman |
| Gonzalez | Gordon | Gradison |
| Gray | Green | Guarini |
| Hall (OH) | Hall (TX) | Hamilton |
| Harris | Hatcher | Hawkins |
| Hayes (IL) | Hayes (LA) | Hefner |
| Henry | Hertel | Hoagland |
| Hochbrueckner | Hopkins | Horton |
| Hoyer | Hubbard | Huckaby |

| | | |
|---|---|---|
| Hughes | Hutto | Jacobs |
| James | Jenkins | Johnson (SD) |
| Johnston | Jones (GA) | Jones (NC) |
| Jontz | Kaptur | Kasich |
| Kastenmeier | Kennelly | Kildee |
| Kolter | Kostmayer | LaFalce |
| Lancaster | Lantos | Laughlin |
| Leach (IA) | Leath (TX) | Lehman (CA) |
| Lehman (FL) | Levin (MI) | Levine (CA) |
| Lewis (GA) | Lipinski | Lloyd |
| Long | Lowey (NY) | Luken, Thomas |
| Machtley | Manton | Markey |
| Martinez | Matsui | Mavroules |
| Mazzoli | McCloskey | McCurdy |
| McDade | McDermott | McGrath |
| McHugh | McMillen (MD) | McNulty |
| Mfume | Mineta | Moakley |
| Mollohan | Montgomery | Morrison (CT) |
| Morrison (WA) | Mrazek | Murphy |
| Murtha | Nagle | Natcher |
| Neal (MA) | Nelson | Nowak |
| Oakar | Oberstar | Obey |
| Olin | Ortiz | Owens (NY) |
| Owens (UT) | Pallone | Panetta |
| Parker | Parris | Patterson |
| Payne (VA) | Pease | Pelosi |
| Penny | Perkins | Pickett |
| Pickle | Porter | Poshard |
| Price | Pursell | Rahall |
| Rangel | Richardson | Rinaldo |
| Roe | Ros-Lehtinen | Rose |
| Rostenkowski | Rowland (CT) | Rowland (GA) |
| Roybal | Russo | Sabo |
| Sangmeister | Sarpalius | Savage |
| Sawyer | Saxton | Scheuer |
| Schneider | Schroeder | Schuette |
| Schumer | Sharp | Shays |
| Sikorski | Skaggs | Skelton |
| Slattery | Slaughter (NY) | Smith (FL) |
| Smith (IA) | Smith (NJ) | Smith (VT) |
| Snowe | Solarz | Spratt |
| Staggers | Stallings | Stark |
| Stenholm | Stokes | Studds |
| Synar | Tallon | Tanner |
| Tauke | Tauzin | Taylor |
| Thomas (GA) | Torres | Torricelli |

| | | |
|---|---|---|
| Towns | Traficant | Traxler |
| Udall | Unsoeld | Valentine |
| Vento | Visclosky | Volkmer |
| Walgren | Walsh | Watkins |
| Waxman | Weiss | Weldon |
| Wheat | Whitten | Williams |
| Wise | Wolpe | Wyden |
| Yates | Yatron | |

NAYS -- 135

| | | |
|---|---|---|
| Archer | Armey | Baker |
| Ballenger | Bartlett | Barton |
| Bateman | Bentley | Bereuter |
| Bilirakis | Bliley | Boehlert |
| Broomfield | Buechner | Bunning |
| Callahan | Campbell (CA) | Chandler |
| Clinger | Coble | Coleman (MO) |
| Combest | Cox | Craig |
| Crane | Dannemeyer | Davis |
| DeLay | DeWine | Dickinson |
| Dornan (CA) | Douglas | Dreier |
| Emerson | Fawell | Fields |
| Frenzel | Gallegly | Gallo |
| Gekas | Gillmor | Gingrich |
| Goodling | Goss | Grandy |
| Grant | Gunderson | Hammerschmidt |
| Hancock | Hansen | Hastert |
| Hefley | Herger | Hiler |
| Houghton | Hunter | Hyde |
| Inhofe | Johnson (CT) | Kolbe |
| Kyl | Lagomarsino | Lent |
| Lewis (CA) | Lewis (FL) | Lightfoot |
| Livingston | Lowery (CA) | Lukens, Donald |
| Madigan | Marlenee | Martin (IL) |
| Martin (NY) | McCandless | McCollum |
| McCrery | McMillan (NC) | Meyers |
| Michel | Miller (OH) | Moody |
| Moorhead | Myers | Nielson |
| Oxley | Packard | Pashayan |
| Paxon | Petri | Quillen |
| Ravenel | Ray | Regula |
| Rhodes | Ridge | Ritter |
| Roberts | Robinson | Rogers |
| Rohrabacher | Roth | Roukema |
| Saiki | Schaefer | Schiff |

| | | |
|---|---|---|
| Schulze | Sensenbrenner | Shaw |
| Shumway | Shuster | Skeen |
| Slaughter (VA) | Smith (NE) | Smith (TX) |
| Smith, Denny (OR) | Smith, Robert (NH) | Smith, Robert (OR) |
| Solomon | Spence | Stangeland |
| Stearns | Stump | Sundquist |
| Thomas (CA) | Thomas (WY) | Upton |
| Vander Jagt | Vucanovich | Walker |
| Weber | Whittaker | Wolf |
| Wylie | Young (AK) | Young (FL) |

NOT VOTING -- 20

| | | |
|---|---|---|
| Brooks | Bryant | Burton |
| Edwards (OK) | Garcia | Holloway |
| Ireland | Kanjorski | Kennedy |
| Kleczka | McEwen | Miller (CA) |
| Miller (WA) | Molinari | Morella |
| Neal (NC) | Payne (NJ) | Sisisky |
| Swift | Wilson | |

## xviii. 135 Cong Rec H 8618: The Civil Rights Commission Reauthorization Act of 1989

FOCUS - 20 of 28 DOCUMENTS

Congressional Record -- House

Tuesday, November 14, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8618*

REFERENCE: Vol. 135 No. 159

TITLE: THE CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. EDWARDS of California; Mr. GEKAS; Mr. SENSENBRENNER

TEXT: [*H8618] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3532) to extend the U.S. Commission on Civil Rights, as amended.

The Clerk read as follows:

H.R. 3532

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "The Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 is amended --

(1) in section 7, by striking "1989" and inserting "1990"; and

(2) in section 8, by striking "six years after its date of enactment" and inserting "on May 31, 1990".

The SPEAKER pro tempore. Is a second demanded?

Mr. GEKAS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

Mr. SENSENBRENNER. Mr. Speaker, I object to the ordering of the second, and on that I demand tellers.

Mr. EDWARDS of California. Mr. Speaker, I withdraw my motion.

## xix. 135 Cong Rec H 8618: The Civil Rights Commission Reauthorization Act of 1989

FOCUS - 21 of 28 DOCUMENTS

Congressional Record -- House

Tuesday, November 14, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8618*

REFERENCE: Vol. 135 No. 159

TITLE: THE CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. EDWARDS of California; Mr. GEKAS; Mr. MOORHEAD; Mr. SENSENBRENNER

TEXT: [*H8618] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3532) to extend the United States Commission on Civil Rights.

The Clerk read as follows:

H.R. 3532

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "The Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 is amended --

(1) in section 7, by striking "1989" and inserting "1990"; and

(2) in section 8, by striking "six years after its date of enactment" and inserting "on May 31, 1990".

SEC. 3. STAFF DIRECTOR.

Section 6(a)(1) of the United States Commission on Civil Rights Act of 1983 is amended by striking "the President with the concurrence of a majority of".

PARLIAMENTARY INQUIRIES

Mr. GEKAS. Mr. Speaker, point of parliamentary inquiry. It is my understanding that the gentleman from California had withdrawn the motion to consider the very bill which he now brings to the desk again. What is the difference between the original motion made and then withdrew and the presentation of the matter as it now obtains?

The SPEAKER pro tempore. The original motion was with an amendment. The bill presently before the House is as introduced originally.

Mr. SENSENBRENNER. Mr. Speaker, further parliamentary inquiry, does not the gentleman's motion to suspend the rules include the amendment that was adopted by the Committee on the Judiciary this morning?

Mr. EDWARDS of California. That was correct, the first motion.

Mr. SENSENBRENNER. And a further parliamentary inquiry, the motion to suspend the rules contains the provision that takes away the power of the President to appoint the staff director of the Commission invested in the Commission itself?

Mr. EDWARDS of California. Is that a parliamentary inquiry to me, Mr. Speaker?

The SPEAKER pro tempore. The Chair can only answer that the bill offered for passage under the pending motion is the bill as introduced and referred to committee.

Mr. SENSENBRENNER. I thank the Chair.

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from California [Mr. Edwards] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. Gekas] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, H.R. 3532 simply buys Congress more time, 6 months, to address the future of the Civil Rights Commission. If we do not extend the Commission [*H8619] for 6 months, the Commission will die on November 30, 1989.

The Subcommittee on Civil and Constitutional Rights, which I chair, began reauthorization hearings in April, 1989. There was clear consensus then, from Members on both sides of the asile, that this Nation needs a strong, independent, credible and effective Civil Rights Commission. But no one then had an effective plan of how to bring this about.

It was not until October that proposals were finally introduced on the Commission's future. Four proposals have been introduced within the last month, and all deserve careful and respectful study.

The President asked Congress, in June, to join him in a new partnership to reauthorize the Civil Rights Commission, with the goal of launching a renewed civil rights mission. But he did not present a proposal until November 8, last week.

The White House proposal does not address the serious financial and administrative management problems found by the GAO in 1986, and never acted upon by the Commission. The White House proposal simply extends the Commission for 6 more years.

Like the other proposals, the White House proposal will be carefully considered by the Subcommittee as soon as we return after the recess. But it should not be rammed through in the closing rush of Congress.

I received a letter last week from the White House, dated November 7. The President's Chief of Staff, Governor John Sununu, indicated that the President is troubled by the contentious nature of the Commission in recent years.

I, too, have been troubled by this contentiousness. But the problems and troubles of the Commission extend beyond contentious meetings and conflicting personalties. The Commission has been troubled by management problems which have not been addressed.

In the mid 1980's, allegations were raised regarding administrative and financial mismanagement at the Commission. The General Accounting Office reported its findings of mismanagement to the Congress in 1986, yet the Commission has taken no actions to address the troubling issues raised by the GAO.

The Commission has been without a permanent staff director since 1986. The President has authority to appoint the staff director, but has not done so. I was hopeful that upon taking office the President would have appointed a permanent staff director, as a critical first step toward revitalizing the Commission.

It would not be good public policy to extend the Commission for a substantial period of time, such as 6 years, without addressing fundamental problems at the Commission. A 6-year extension, as proposed by the White House, does not address these problems.

A number of interesting proposals have been introduced in the last month, including one from the gentleman from Wisconsin. These proposals merit careful consideration by the Congress, but this cannot be accomplished in the closing days of the session.

Finally, Governor Sununu claims that the President will not be able to attract top quality people to serve on the Commission for only 6 months.

But this differs from the facts. A number of prominent and well qualified Americans have already indicated their eagerness to serve as members of the Commission as Presidential appointees. A 6-month extension gives the President the opportunity to appoint these people to the Commission.

I am pleased to note that this bill, the 6-month extension, is endorsed by the Leadership Conference on Civil Rights, a coalition of 185 national civil rights organizations.

This will be our only chance to vote on whether to continue the Civil Rights Commission. I urge my colleagues to vote for this short term extension. Don't vote to kill the Commission.

Mr. GEKAS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. Sensenbrenner].

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, on November 8 of last week the Washington Post ran a five-column headline that reads, "Bush Accuses Congress of Blocking Everything I Try to Do."

Here we are, at 8:21 in the evening before an empty Chamber, and the majority party is attempting to thwart the will of the President of the United States again.

Let the record be clear: this motion to suspend the rules is not the bill that was reported from the Committee on the Judiciary this morning which extended the life of the Civil Rights Commission for 6 months. It adds one extra element, and that is that it transfers the power to appoint the staff director of the Civil Rights Commission from the Office of the President of the United States and places it in the hands of the Commission.

If that will not guarantee that this bill will be vetoed, I do not know what will.

So this is an attempt to further politicize a Commission that has been very contentious for the past several years. It is a move purely and simply designed to ensure failure for President Bush's first Commission on Civil Rights.

Now, let us look at what has been going on in the Civil Rights Commission. The Commission was reauthorized 6 years ago, in 1983. Four of the members of the Commission were appointed by the President without confirmation by the Senate, and one member each of the Commission was appointed by the majority and minority leaders of both the Senate and the House of Representatives, for a total of eight members of the Commission.

The Commission has denigrated itself into personal name calling, and contentious backbiting so that it has become a laughing stock in the Nation, and is a waste of the taxpayers' money.

Both Republicans and Democrats have joined to significantly reduce the funding of the Commission. If this Commission continues the way it is going, it deserves to die a peaceful death when its present lease on life expires on November 30, 1989.

The terms of four of the members of the Commission expire within the next month. With a 6-month extension, it will be impossible for the President, the Senator from Kansas, [Mr. Dole], and the Republican leader, the gentleman from Illinois [Mr. Michel], to find qualified persons willing to serve for this short period of time while the fate of the Commission rests in the hands of Congress.

Furthermore, there is no permanent staff director in the Commission. It will be even harder to find someone to do those managerial improvements that the gentleman from California [Mr. Edwards] and I both agree are essential if this Commission is to get back on track and serve a useful purpose, advancing the cause of civil rights in this country.

All Members have known that the life of the Civil Rights Commission exprise on November 30, and it is at this late hour that a move is made in Congress to suspend the rules and pass a bill that will continue all of the problems that we have been discussing for another 6 months while the Commission's members and while the Commission's mission are left dangling to the winds that blow in this U.S. Capitol Building.

Mr. Speaker, it is for this reason that the Chief of Staff at the White House, Governor Sununu, wrote the gentleman from California [Mr. Edwards] and myself, stating that the President is opposed to a 6-month extension.

Governor Sununu's letter reads in part:

The administration would be unable to attract the qualified kind of individuals the President seeks to serve on the Board, given the uncertainty associated with the 6-month reauthorization. We view such a short reprieve as a hollow gesture that constitutes a disservice to the Commission and to the cause of civil rights in this Nation, while merely delaying a decision we should be prepared to make today.

The administration has come out in favor of a 6-year reauthorization of the Commission, leaving the appointment structure the same as it is now.

[*H8620] While I would prefer that all of the Members of the Commission be presidential appointees with Senate confirmation, I am willing to yield to this desire on the part of the White House.

The White House also would like to make sure that the Commission can start afresh and that none of the existing members of the Commission who have contributed so greatly to the backbiting and personal bickering and the disgrace that has come upon this Commission will be on a reconstituted Commission.

So I have an amendment which I would have offered had this bill not come up in a nonamendable from to reauthorize the Commission for 6 months, to have a 1-day gap so that the terms of the holdover commissioners would expire and all the members of the Commission would start afresh beginning on December 2, and to provide a savings clause so that the Civil Service employees would be transferred from the old Commission to the new Commission without losing their jobs.

If we really want to stop a hemorrhage of the managerial mismanagement, the backbiting and the waste of taxpayers' money that this Commission has gotten itself so unfortunately and regrettably involved in, then the motion to suspend the rules by the gentleman from California [Mr. Edwards] should be defeated when it comes up for a vote.

If we really want to depoliticize this Commission, the worst thing in the world to do would be to turn the power of appointment of the staff director from the President to the Commission itself, because this will certainly result in a veto of the bill, and then there will be no Commission, we will have a lot of ill will when we start afresh looking at what to do about this Commission, and it would be better to stop the ill will now, once and for all, by defeating this motion to suspend the rules.

Mr. GEKAS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Moorhead].

Mr. MOORHEAD. Mr. Speaker, I am concerned about what is happening to the Civil Rights Commission. I believe that our country needs a strong and effective Commission to guarantee the civil rights of the people of this country.

Certainly this 6-month extension guarantees that we will not have an effective Commission over the next 6-month period. We will only be continuing the problems that exist there at the present time.

After the month of December there will be only four members of the Commission that remain. The other terms will have expired.

The administration strongly supports a 6-year extension of the Civil Rights Commission, time enough to have an opportunity to work out the commitment of this President to civil rights.

The bill does not even give him a chance to succeed. It would be impossible over a short period of 6 months to get people who would serve on the Commission, who would actually take time away from their employment to do the kind of work that is necessary if the Civil Rights Commission is to be effective.

Mr. Speaker, I urge a "no" vote on H.R. 3532 and urge my colleagues to support the administration's proposal when it is allowed to be offered to reauthorize the Commission for 6 years with the 1-day gap to relieve the current Commissioners and staff director of their duties.

Let us give the President a chance to make a difference in civil rights.

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me point out to my colleagues that the life of the U.S. Commission on Civil Rights expires. The Commission dies in 2 weeks unless this bill is passed. A "no" vote on this bill that we have before us tonight is a vote to kill the U.S. Commission on Civil Rights.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have seen this happen quite often during the time I have been in the Congress of the United States with a Republican President, Reagan and now Bush, it seems that the Congress time and time again in so many fields has forgotten or is willing to ignore the fact that those individuals were elected by a majority of the people of the United States to be President, not just to occupy the White House but to give them the fundamental power of appointment to the courts, to

the commissions, to the various functions that the President has the duty to fill through the power of appointment.

Here we have, again, a supreme example of the majority party in the House attempting to defy the President, rob him of that inherent constitutional power of appointment, which ironically the Congress conferred on him in the first place with respect to the Civil Rights Commission.

Here is an opportunity for us to sit down again with a "no" vote on this suspension tomorrow or however we can set this aside and allow a proper process to allow the President of the United States to do the duty for which he was elected by a majority of the people of the United States and not to allow the Congress to meddle with that any further.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Bilbray). The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and pass the bill, H.R. 3532.

The question was taken; and on a division (demanded by Mr. Sensenbrenner) there were -- ayes 4, noes 3.

Mr. EDWARDS of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed until tomorrow.

## xx. 135 Cong Rec S 14251: Statements on Introduced Bills and Joint Resolutions

FOCUS - 22 of 28 DOCUMENTS

Congressional Record -- Senate

Thursday, October 26, 1989;
(Legislative day of Monday, September 18, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 14251*

REFERENCE: Vol. 135 No. 147

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: Mr. HATCH

TEXT: [*S14251] By Mr. HATCH (for himself and Mr. Thurmond):

S. 1800. A bill to reauthorize the U.S. Commission on Civil Rights, and for other purposes; to the Committee on the Judiciary.

U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT

Mr. HATCH. Mr. President, today I am introducing the U.S. Commission on Civil Rights Reauthorization Act of 1989. It is a straightforward bill. It simply extends the life of the current U.S. Commission on Civil Rights for 6 years. It makes no changes in the current law authorizing the Commission.

An independent and balanced Commission can serve the useful purpose of examining the direction of civil rights into the 1990's. I believe the Commission should be left free to examine those issues it feels merit its consideration. We should reauthorize it as is, without imposing constraints on it and without tampering with the Commission's independence.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1800

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

(a) Termination. -- Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1983" and inserting "1989".

(b) Authorization of Appropriation. -- Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended by striking "1989" and inserting "1995".

## xxi. 135 Cong Rec S 14251: Statements on Introduced Bills and Joint Resolutions

FOCUS - 23 of 28 DOCUMENTS

Congressional Record -- Senate

Thursday, October 26, 1989;
(Legislative day of Monday, September 18, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 14251*

REFERENCE: Vol. 135 No. 147

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: MR. SIMON

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

[*S14251] By Mr. SIMON:

S. 1801. A bill to extend the U.S. Commission on Civil Rights; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION TEMPORARY REAUTHORIZATION ACT

MR. SIMON. MR. PRESIDENT, TODAY I AM INTRODUCING A BILL TO EXTEND THE CHARTER OF THE U.S. COMMISSION ON CIVIL RIGHTS, WHICH IS DUE TO EXPIRE ON NOVEMBER 30, FOR 6 MONTHS. A COMPANION BILL IN THE OTHER BODY IS BEING INTRODUCED BY MY GOOD FRIEND AND DISTINGUISHED COLLEAGUE, THE GENTLEMAN FROM CALIFORNIA, MR. DON EDWARDS.

THE U.S. COMMISSION ON CIVIL RIGHTS WAS CREATED IN 1957 BY PRESIDENT EISENHOWER, AND FOR MANY YEARS IT ENJOYED AN EXCELLENT REPUTATION AS A NONPARTISAN, INDEPENDENT AGENCY. THE COMMISSION ATTRACTED MANY DISTINGUISHED AMERICANS TO ITS SERVICE, AND ITS LANDMARK STUDIES MADE IMPORTANT CONTRIBUTIONS TO OUR NATION'S PROGRESS IN THE AREA OF CIVIL RIGHTS.

IN THE RECENT PAST, HOWEVER, THE COMMISSION HAS SUFFERED UNDER A SERIES OF PARTISAN APPOINTMENTS AND A LOSS OF CREDIBILITY. AS A RESULT, THERE IS CURRENTLY NO CONSENSUS ON WHAT TO DO WHEN THE COMMISSION EXPIRES NEXT MONTH.

SEVERAL WEEKS AGO I INTRODUCED S. 1714, WHICH WOULD CREATE A NEW, REINVIGORATED CIVIL RIGHTS COMMISSION AFTER LETTING THE OLD ONE EXPIRE. OTHER LEGISLATION HAS SINCE BEEN INTRODUCED BY MY COLLEAGUES IN THIS AND THE OTHER BODY. THERE IS INTEREST FROM THE ADMINISTRATION IN FINDING A WORKABLE SOLUTION.

BUT THERE IS LITTLE TIME. THE SIMON-EDWARDS BILL PROVIDES THAT TIME, BY GIVING A SHORT, 6-MONTH EXTENSION TO THE CURRENT COMMISSION. THE BILL ALSO ALLOWS THE COMMISSION TO FILL THE POST OF STAFF DIRECTOR, WHICH HAS BEEN VACANT, SAVE FOR AN ACTING STAFF DIRECTOR, FOR 35 MONTHS.

MR. PRESIDENT, I BELIEVE THE WORK OF THE COMMISSION IS FAR TOO IMPORTANT TO LET IT DIE, PARTICULARLY SINCE DISCUSSIONS IN CONGRESS AND THE ADMINISTRATION ARE WELL UNDERWAY. THE MAJORITY LEADER HAS TOLD ME HE WILL DO ALL HE CAN TO EXPEDITE THIS LEGISLATION. I HOPE WE CAN ACT

QUICKLY ON THIS AND EXTEND THE LIFE OF THE COMMISSION BEFORE TIME RUNS OUT.

MR. PRESIDENT, I ASK UNANIMOUS CONSENT THAT THE TEXT OF THE BILL BE PRINTED IN THE RECORD.

THERE BEING NO OBJECTION, THE BILL WAS ORDERED TO BE PRINTED IN THE RECORD, AS FOLLOWS:

S. 1801

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

THIS ACT MAY BE CITED AS THE "THE CIVIL RIGHTS COMMISSION TEMPORARY REAUTHORIZATION ACT OF 1989".

SEC. 2. REAUTHORIZATION.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983 IS AMENDED --

(1) IN SECTION 7, BY STRIKING "1989" AND INSERTING "1990"; AND

(2) IN SECTION 8, BY STRIKING "SIX YEARS AFTER ITS DATE OF ENACTMENT" AND INSERTING "ON MAY 31, 1990".

SEC. 3. STAFF DIRECTOR.

SECTION 6(A)(1) OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983 IS AMENDED BY STRIKING "THE PRESIDENT WITH THE CONCURRENCE OF A MAJORITY OF".

## xxii. 135 Cong Rec S 12350: Statements on Introduced Bills and Joint Resolutions

FOCUS - 24 of 28 DOCUMENTS

Congressional Record -- Senate

Monday, October 2, 1989;
(Legislative day of Monday, September 18, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 12350*

REFERENCE: Vol. 135 No. 129

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: MR. SIMON

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

[*S12350] By Mr. SIMON:

S. 1714. A bill to reestablish the U.S. Commission on Civil Rights, and for other purposes; to the Committee on the Judiciary.

UNITED STATES COMMISSION ON CIVIL RIGHTS AMENDMENT ACT

MR. SIMON. MR. PRESIDENT, AUTHORIZATION OF THE U.S. COMMISSION ON CIVIL RIGHTS IS SET TO EXPIRE ON NOVEMBER 30, 1989. THE SUBCOMMITTEE ON THE CONSTITUTION, WHICH I CHAIR, HAS JURISDICTION OVER REAUTHORIZATION. TODAY I AM INTRODUCING A BILL THAT WOULD REESTABLISH A REVITALIZED CIVIL RIGHTS COMMISSION AFTER THE CURRENT AUTHORITY EXPIRES. MY BILL WOULD ENABLE THE COMMISSION TO START WITH A CLEAN SLATE, WITHOUT THE POLITICAL ACRIMONY AND CHARGES OF BAD FAITH THAT HAVE MARRED THE CREDIBILITY OF THE COMMISSION IN THE PAST SEVERAL YEARS.

SINCE 1957, WHEN THE CIVIL RIGHTS COMMISSION WAS ESTABLISHED, OUR COUNTRY HAS MADE TREMENDOUS PROGRESS IN FULFILLING THE PROMISE OF EQUAL RIGHTS. BUT THE PROBLEMS OF DISCRIMINATION HAVE NOT BEEN SOLVED; INDEED, THEY HAVE GROWN MORE COMPLEX. I BELIEVE THE MISSION OF THE COMMISSION IS TOO IMPORTANT TO LET IT DIE, OR TO LET IT CONTINUE WITH AS LITTLE CREDIBILITY AS IT HAS HAD IN RECENT YEARS. WE NEED A CIVIL RIGHTS COMMISSION THAT IS TRUE TO ITS ORIGINAL PURPOSE AS AN "INDEPENDENT, BIPARTISAN, FACT-FINDING AGENCY."

UNDER MY BILL, THE COMMISSION WOULD CONTINUE TO HAVE EIGHT MEMBERS. THE PRESIDENT WOULD APPOINT FOUR TO STAGGERED TERMS; THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE WOULD EACH HAVE TWO APPOINTMENTS. TO PROTECT THE INDEPENDENCE OF THE COMMISSION, MEMBERS COULD BE REMOVED FROM OFFICE BY THE PRESIDENT ONLY FOR NEGLECT OF DUTY OR MALFEASANCE IN OFFICE. THERE ARE LIMITS ON COMPENSATION AND TRAVEL EXPENSES, TO AVOID PROBLEMS EXPERIENCED IN THE PAST.

THE LEGISLATION EXPANDS THE SCOPE OF THE COMMISSION'S CHARGE TO STUDY AND REPORT ON DISCRIMINATION BASED ON COLOR, RACE, RELIGION, SEX, AGE, OR DISABILITY BY ADDING DISCRIMINATION BASED ON LANGUAGE. ANNUAL REPORTS TO CONGRESS ARE REQUIRED, IN ADDITION TO OTHER REPORTS THE COMMISSION MIGHT PUBLISH. IN RECOGNITION OF ITS SPECIAL EXPERTISE AND INDEPENDENCE, THE NEW COMMISSION IS ALSO GIVEN THE AUTHORITY TO FILE AMICUS CURIAE BRIEFS BEFORE THE U.S. SUPREME COURT, WHEN APPROPRIATE.

MR. PRESIDENT, IN DRAFTING MY BILL I HAVE RELIED ON THE ADVICE OF MANY OF MY COLLEAGUES, AS WELL AS MANY CIVIL RIGHTS LEADERS, WITH WHOM I SHARED EARLIER DRAFTS. MANY HAVE GIVEN ME DETAILED SUGGESTIONS THAT I HAVE INCORPORATED IN THIS LEGISLATION. ALMOST ALL HAVE SUPPORTED THE CONCEPT OF A NEW, REVITALIZED COMMISSION.

THESE CAN PERHAPS BEST BE EXPRESSED IN THE WORDS OF DR. ARTHUR FLEMMING, FORMER CHAIRMAN OF THE U.S. COMMISSION ON CIVIL RIGHTS:

I BELIEVE THAT IF THE PRINCIPAL COMPONENTS OF YOUR DRAFT BILL WERE ENACTED INTO LAW, CONGRESS WOULD HAVE LAID THE FOUNDATION FOR THE ACHIEVEMENT OF *** AN AUTONOMOUS, BIPARTISAN AGENCY WITH MEMBERS WHO ARE BOTH INDEPENDENT AND OF UNQUESTIONED ABILITY. WE HOPE THAT *** THE CONGRESS WILL ACT SOON TO GIVE THE NATION ONCE AGAIN THE SERVICES OF A BIPARTISAN, INDEPENDENT U.S. COMMISSION ON CIVIL RIGHTS.

MR. PRESIDENT, I URGE MY COLLEAGUES TO JOIN ME BY COSPONSORING THIS HISTORIC LEGISLATION. I ASK UNANIMOUS CONSENT THAT THE COMPLETE TEXT OF THE BILL BE PRINTED IN THE RECORD FOLLOWING MY REMARKS.

THERE BEING NO OBJECTION, THE BILL WAS ORDERED TO BE PRINTED IN THE RECORD, AS FOLLOWS:

S. 1714

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

"THIS ACT MAY BE CITED AS THE "UNITED STATES COMMISSION ON CIVIL RIGHTS AMENDMENTS ACT OF 1989".

SEC. 2. UNITED STATES COMMISSION ON CIVIL RIGHTS.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983 (42 U.S.C. 1975 ET SEQ.) IS AMENDED TO READ AS FOLLOWS:

"SECTION 1. SHORT TITLE.

"THIS ACT MAY BE CITED AS THE 'UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1989'.

"SEC. 2. ESTABLISHMENT OF COMMISSION.

"THERE IS ESTABLISHED A UNITED STATES COMMISSION ON CIVIL RIGHTS (HEREINAFTER REFERRED TO IN THIS ACT AS THE 'COMMISSION').

"SEC. 3. MEMBERSHIP OF COMMISSION.

"(A) APPOINTMENT. --

"(1) IN GENERAL. -- THE COMMISSION SHALL CONSIST OF EIGHT MEMBERS, OF WHICH --

"(A) FOUR MEMBERS SHALL BE APPOINTED BY THE PRESIDENT;

"(B) TWO MEMBERS SHALL BE APPOINTED BY THE PRESIDENT PRO TEMPORE OF THE SENATE; AND

"(C) TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

"(B) POLITICAL AFFILIATION. -- NOT MORE THAN FOUR MEMBERS OF THE COMMISSION MAY BE FROM THE SAME POLITICAL PARTY.634

"(C) TERMS OF OFFICE, VACANCIES, AND DISMISSAL. --

"(1) INITIAL TERM. -- THE TERMS OF OFFICE FOR THE INITIAL MEMBERS OF THE COMMISSION APPOINTED UNDER SUBSECTION (A) SHALL BE --

"(A) FOR THE APPOINTMENTS MADE UNDER SUBSECTION (A)(1)(A) --

"(I) A PERIOD OF 4 YEARS FOR TWO SUCH MEMBERS; AND

"(II) A PERIOD OF 2 YEARS FOR TWO SUCH MEMBERS;

"(B) FOR THE APPOINTMENTS UNDER SUBSECTION (A)(1)(B) --

"(I) A PERIOD OF 3 YEARS FOR ONE SUCH MEMBER; AND

"(II) A PERIOD OF 6 YEARS FOR ONE SUCH MEMBER; AND

"(C) FOR THE APPOINTMENTS UNDER SUBSECTION (A)(1)(C) --

"(I) A PERIOD OF 3 YEARS FOR ONE SUCH MEMBER; AND

"(II) A PERIOD OF 6 YEARS FOR ONE SUCH MEMBER.

"(2) SUBSEQUENT TERM. -- THE TERM OF OFFICE FOR MEMBERS OF THE COMMISSION WHO ARE APPOINTED SUBSEQUENT TO INITIAL MEMBERS APPOINTED UNDER PARAGRAPH (1) SHALL BE 6 YEARS.634

"(3) DURATION OF TERM OF OFFICE. -- AN INDIVIDUAL SHALL NOT SERVE FOR MORE THAN 12 YEARS ON THE COMMISSION.

"(4) VACANCIES. --

"(A) IN GENERAL. -- A VACANCY ON THE COMMISSION SHALL NOT AFFECT THE POWERS OF SUCH COMMISSION. A VACANCY SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE.

"(B) TERM OF SUCCESSOR. -- AN INDIVIDUAL WHO IS APPOINTED TO FILL A VACANCY ON THE COMMISSION SHALL SERVE FOR THE REMAINDER OF THE TERM FOR WHICH THE PREDECESSOR OF SUCH INDIVIDUAL WAS APPOINTED.

"(5) DISMISSAL FROM OFFICE. -- THE PRESIDENT MAY REMOVE A MEMBER OF THE COMMISSION ONLY FOR NEGLECT OF DUTY OR MALFEASANCE IN OFFICE.

"(C) CHAIR, VICE CHAIR, AND STAFF DIRECTOR. --

"(1) SELECTION. -- THERE SHALL BE A CHAIR, VICE CHAIR, AND FULL-TIME STAFF DIRECTOR OF THE COMMISSION, WHO SHALL BE SELECTED BY A MAJORITY OF THE MEMBERS OF THE COMMISSION.

"(2) TERM OF CHAIR. -- THE CHAIR OF THE COMMISSION SHALL SERVE FOR A TERM NOT TO EXCEED 3 YEARS AND MAY SERVE SUCCESSIVE TERMS.

"(3) VICE CHAIR. -- THE VICE CHAIR SHALL ACT IN THE PLACE OF THE CHAIR IN THE ABSENCE OF THE CHAIR.

"(D) COMPENSATION. --

"(1) MEMBERS. --

"(A) IN GENERAL. -- EACH MEMBER OF THE COMMISSION WHO IS NOT OTHERWISE IN THE SERVICE OF THE FEDERAL GOVERNMENT SHALL RECEIVE A SUM EQUIVALENT TO THE COMPENSATION PAID AT LEVEL III OF THE FEDERAL EXECUTIVE SALARY SCHEDULE, PURSUANT TO SECTION 5314 OF TITLE 5, UNITED STATES CODE, PRORATED ON A DAILY BASIS FOR EACH DAY SPENT IN THE WORK OF THE COMMISSION.

"(B) TRAVEL EXPENSES AND PER DIEM. -- EACH MEMBER OF THE COMMISSION SHALL RECEIVE REASONABLE ALLOWANCES FOR NECESSARY EXPENSES OF TRAVEL, LODGING, AND SUBSISTENCE INCURRED IN ATTENDING MEETINGS AND OTHER ACTIVITIES OF THE COMMISSION IN AMOUNTS THAT SHALL NOT EXCEED THE MAXIMUM FIXED BY SUBCHAPTER 1 OF CHAPTER 57 OF TITLE 5, UNITED STATES CODE, FOR OFFICERS AND EMPLOYEES OF THE UNITED STATES.

"(C) FEDERAL EMPLOYEE. -- EACH MEMBER OF THE COMMISSION WHO IS OTHERWISE IN THE SERVICE OF THE FEDERAL GOVERNMENT SHALL SERVE WITHOUT COMPENSATION IN ADDITION TO THAT RECEIVED FOR SUCH OTHER SERVICE, BUT WHILE ENGAGED IN THE WORK OF THE COMMISSION SHALL BE PAID EXPENSES AS PROVIDED UNDER SUBPARAGRAPH (B).

"(D) LIMITATION. -- THE TOTAL AMOUNT THAT EACH MEMBER OF THE COMMISSION MAY RECEIVE UNDER SUBPARAGRAPHS (A) THROUGH (C) [*S12351] IN ANY ONE CALENDAR YEAR SHALL NOT EXCEED ONE THIRD OF THE TOTAL COMPENSATION PAID TO THE STAFF DIRECTOR IN ANY ONE CALENDAR YEAR UNDER PARAGRAPH (2).

"(2) STAFF DIRECTOR. -- THE STAFF DIRECTOR OF THE COMMISSION SHALL RECEIVE A SUM EQUIVALENT TO THE COMPENSATION PAID AT LEVEL III OF THE FEDERAL EXECUTIVE SALARY SCHEDULE, PURSUANT TO SECTION 5314 OF TITLE 5, UNITED STATES CODE.

"SEC. 4. DUTIES OF THE COMMISSION.

"(A) IN GENERAL. -- THE COMMISSION SHALL --

"(1) INVESTIGATE ALLEGATIONS IN WRITING, MADE UNDER OATH OR AFFIRMATION AND SETTING FORTH FACTS ON WHICH SUCH ALLEGATION IS BASED, THAT CERTAIN CITIZENS OF THE UNITED STATES ARE BEING DEPRIVED OF THE RIGHT TO VOTE AND HAVE SUCH VOTE COUNTED BY REASON OF COLOR, RACE, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN;

"(2) STUDY AND COLLECT INFORMATION, AND APPRAISE THE LAWS AND POLICIES OF THE FEDERAL GOVERNMENT, CONCERNING INFRINGEMENTS OF

EQUAL OPPORTUNITY BECAUSE OF RACE, COLOR, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN.

"(3) SERVE AS NATIONAL CLEARINGHOUSE FOR INFORMATION CONCERNING DISCRIMINATION OR DENIALS OF EQUAL PROTECTION OF THE LAWS UNDER THE CONSTITUTION BECAUSE OF RACE, COLOR, RELIGION, SEX, AGE, LANGUAGE, DISABILITY, OR NATIONAL ORIGIN, INCLUDING THE FIELDS OF VOTING, EDUCATION, HOUSING, EMPLOYMENT, THE USE OF PUBLIC FACILITIES, AND TRANSPORTATION, OR IN THE ADMINISTRATION OF JUSTICE; AND

"(4) INVESTIGATE ALLEGATIONS, MADE IN WRITING AND UNDER OATH OR AFFIRMATION, THAT CITIZENS ARE UNLAWFULLY BEING ACCORDED OR DENIED THE RIGHT TO VOTE AND TO HAVE SUCH VOTE PROPERLY COUNTED IN ANY ELECTION OF THE PRESIDENTIAL ELECTORS, MEMBERS OF THE SENATE, OR MEMBERS OF THE HOUSE OF REPRESENTATIVES, AS A RESULT OF ANY PATTERNS OR PRACTICE OF FRAUD OR DISCRIMINATION IN THE CONDUCT OF SUCH ELECTION.

"(B) LIMITATION. -- NOTHING IN THIS OR ANY OTHER ACT SHALL BE CONSTRUED AS AUTHORIZING THE COMMISSION, THE ADVISORY COMMITTEES OF THE COMMISSION (AS ESTABLISHED UNDER SECTION 5(B)(1)), OR ANY INDIVIDUAL UNDER THE SUPERVISION OR CONTROL OF THE COMMISSION TO INVESTIGATE ANY MEMBERSHIP PRACTICE OR INTERNAL OPERATION OF ANY FRATERNAL ORGANIZATION, COLLEGE OR UNIVERSITY FRATERNITY OR SORORITY, OR ANY RELIGIOUS ORGANIZATION.

"(C) AMICUS CURIAE BRIEFS. -- THE COMMISSION MAY SUBMIT AN AMICUS CURIAE BRIEF TO THE SUPREME COURT OF THE UNITED STATES ON ANY MATTER WITHIN THE JURISDICTION OF THE COMMISSION, IF A MAJORITY OF THE MEMBERS OF THE COMMISSION APPROVE THE SUBMISSION OF SUCH BRIEF.

"(D) REPORTS. --

"(1) IN GENERAL. -- IN ADDITION TO ANY OTHER REPORTS SUBMITTED BY THE COMMISSION, THE COMMISSION SHALL SUBMIT AN ANNUAL REPORT TO CONGRESS AND TO THE PRESIDENT CONCERNING --

"(A) THE EXISTING STATUS OF CIVIL RIGHTS IN THE UNITED STATES;

"(B) THE ENFORCEMENT OF CIVIL RIGHTS LAWS BY FEDERAL, STATE, AND LOCAL GOVERNMENTS;

"(C) THE EXISTING STATUS OF THE POLITICAL, SOCIAL, AND ECONOMIC EQUALITY OF MINORITIES AND WOMEN;

"(D) THE IMPACT OF FEDERAL FISCAL POLICIES, PROGRAMS, AND ACTIVITIES ON MINORITIES AND WOMEN; AND

"(E) ANY OTHER INFORMATION THAT THE MAJORITY OF COMMISSION MEMBERS DETERMINES APPROPRIATE.

"(2) VOTING AND POLITICAL PARTICIPATION. --

"(A) APPRAISAL. -- THE COMMISSION SHALL APPRAISE THE LAWS AND POLICIES OF EACH STATE AND THE FEDERAL GOVERNMENT WITH RESPECT TO DENIALS OF THE RIGHT TO VOTE AND THE POLITICAL PARTICIPATION OF MINORITY GROUPS, INCLUDING AFRICAN AMERICANS, HISPANIC AMERICANS, ASIAN AMERICANS, NATIVE AMERICANS, AMERICANS FROM THE PACIFIC ISLANDS, WOMEN, AND DISABLED INDIVIDUALS.

"(B) REPORT. -- THE COMMISSION MAY CONDUCT STUDIES AND MAKE APPRAISALS AND RECOMMENDATIONS CONCERNING PUBLIC AND PRIVATE AFFIRMATIVE ACTION PROGRAMS.

"(E) ABORTION. -- NOTHING IN THIS OR ANY OTHER ACT SHALL BE CONSTRUED AS AUTHORIZING THE COMMISSION, THE ADVISORY COMMITTEES OF THE COMMISSION (AS ESTABLISHED UNDER SECTION 5(B)(1)), OR AN INDIVIDUAL UNDER THE SUPERVISION OR CONTROL OF THE COMMISSION TO APPRAISE, STUDY, AND COLLECT INFORMATION CONCERNING THE LAWS AND POLICIES OF THE FEDERAL GOVERNMENT, OR ANY OTHER GOVERNMENTAL ENTITY, WITH RESPECT TO ABORTION.

"SEC. 5. POWERS AND DUTIES OF THE COMMISSION.

"(A) EMPLOYEES. -- THE COMMISSION MAY HIRE EMPLOYEES AND PROCURE SERVICES AS AUTHORIZED BY SECTION 3109 OF TITLE 5, UNITED STATES CODE. THE RATE OF COMPENSATION PAID TO SUCH INDIVIDUALS BY THE COMMISSION MAY NOT EXCEED THE DAILY EQUIVALENT PAID FOR POSITIONS AT THE MAXIMUM RATE FOR AN INDIVIDUAL WHO IS AT A POSITION EQUIVALENT TO GS-15 OF THE GENERAL SCHEDULE UNDER SECTION 5332 OF TITLE 5, UNITED STATES CODE.

"(B) ADVISORY COMMITTEES. --

"(1) IN GENERAL. -- THE COMMISSION SHALL ESTABLISH AN ADVISORY COMMITTEE IN EACH STATE THAT SHALL BE COMPOSED OF CITIZENS OF SUCH STATE.

"(2) DIVERSITY OF MEMBERSHIP. --

"(A) POLITICAL AFFILIATION. -- NOT MORE THAN 50 PERCENT OF THE MEMBERS OF EACH ADVISORY COMMITTEE SHALL BE FROM THE SAME POLITICAL PARTY.

"(B) OTHER FACTORS. -- EACH ADVISORY COMMITTEE SHALL HAVE A DIVERSE MEMBERSHIP IN REGARDS TO RACE, ETHNICITY, RELIGION, SEX, LANGUAGE DISABILITY, AND NATIONAL ORIGIN.

"(3) INVESTIGATIVE AUTHORITY. -- AN ADVISORY COMMITTEE ESTABLISHED UNDER PARAGRAPH (1) SHALL HAVE THE SAME INVESTIGATIVE AUTHORITY AS THE COMMISSION HAS UNDER SECTION 6, EXCEPT THAT SUCH COMMITTEE SHALL NOT --

"(A) SUBPOENA A WITNESS OR REQUIRE SUCH WITNESS TO PRODUCE WRITTEN OR OTHER MATERIAL FOR THE COMMISSION; AND

"(B) CONDUCT INVESTIGATIONS BEYOND THE BOUNDARY OF THE STATE WHERE SUCH COMMITTEE IS LOCATED.

"(C) CONSULTATION. -- THE COMMISSION MAY CONSULT WITH GOVERNORS, ATTORNEYS GENERAL, AND OTHER REPRESENTATIVES OF STATE AND LOCAL GOVERNMENTS AND PRIVATE ORGANIZATIONS, AS THE COMMISSION CONSIDERS APPROPRIATE.

"(D) EXEMPTION. -- MEMBERS OF THE COMMISSION, AND MEMBERS OF ADVISORY COMMITTEES ESTABLISHED PURSUANT TO SUBSECTION (B), SHALL BE EXEMPT FROM SECTIONS 203, 205, 207, 208, AND 209 OF TITLE 18 OF THE UNITED STATES CODE.

"(E) RULES AND REGULATIONS. -- THE COMMISSION SHALL HAVE THE POWER TO MAKE SUCH RULES AND REGULATIONS AS ARE NECESSARY TO CARRY OUT THIS ACT.

"(F) TRANSFER OF RECORDS. -- THE COMMISSION SHALL ARRANGE FOR THE TRANSFER OF ALL FILES, RECORDS, AND BALANCES OF APPROPRIATIONS OF THE COMMISSION ON CIVIL RIGHTS AS ESTABLISHED BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983 TO THE COMMISSION ESTABLISHED BY THIS ACT.

"(G) TRANSFER OF EMPLOYEES. --

"(1) TRANSFER TO ORIGINAL POSITION. -- ON THE APPLICATION OF AN INDIVIDUAL WHO --

"(A) IS EMPLOYED IN A POSITION AT GENERAL SCHEDULE 13 GRADE (ESTABLISHED PURSUANT TO SUBCHAPTER III OF CHAPTER 53 OF TITLE 5, UNITED STATES CODE) OR BELOW SUCH GRADE; AND

"(B) WAS AN EMPLOYEE OF THE COMMISSION ON CIVIL RIGHTS AS ESTABLISHED BY UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983, WHO WAS EMPLOYED BY THE COMMISSION ON CIVIL RIGHTS ON THE DATE OF ENACTMENT OF THIS ACT;

THE COMMISSION SHALL CONSIDER AND APPOINT SUCH INDIVIDUAL TO A POSITION WITH THE EQUIVALENT DUTIES, RESPONSIBILITIES, AND RATE OF PAY AS THE POSITION HELD BY SUCH INDIVIDUAL ON THE COMMISSION ON CIVIL RIGHTS AS ESTABLISHED BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983.

"(2) OTHER EMPLOYEES. -- THE COMMISSION MAY APPOINT AN EMPLOYEE OF THE COMMISSION ON CIVIL RIGHTS, WHO IS NOT DESCRIBED UNDER PARAGRAPH (1) AND DID NOT SERVE THE COMMISSION ON CIVIL RIGHTS IN THE CAPACITY OF A COMMISSIONER OR STAFF DIRECTOR, TO A NEW POSITION WITHIN THE COMMISSION.

"(3) RIGHTS AND BENEFITS. -- NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EMPLOYEE TRANSFERRED TO THE COMMISSION UNDER THIS SUBSECTION SHALL RETAIN ALL RIGHTS AND BENEFITS THAT SUCH EMPLOYEE WAS ENTITLED OR ELIGIBLE FOR IMMEDIATELY PRIOR TO SUCH TRANSFER TO THE COMMISSION.

"(H) PUBLICATION IN FEDERAL REGISTER. --

"(1) IN GENERAL. -- THE COMMISSION SHALL PUBLISH IN THE FEDERAL REGISTER --

"(A) A DESCRIPTION OF CENTRAL AND FIELD ORGANIZATIONS OF THE COMMISSION, INCLUDING THE ESTABLISHED PLACES AND METHODS THAT THE PUBLIC MAY SECURE INFORMATION OR MAKE REQUESTS;

"(B) STATEMENTS OF THE GENERAL COURSE AND METHOD BY WHICH ITS FUNCTIONS ARE CHANNELED AND DETERMINED; AND

"(C) RULES ADOPTED AS AUTHORIZED BY LAW.

"(2) NONPUBLICATION. -- NO INDIVIDUAL MAY BE SUBJECT TO RULES, ORGANIZATIONS, OR PROCEDURES NOT PUBLISHED AS REQUIRED UNDER PARAGRAPH (1).

"SEC. 6. COMMISSION HEARINGS.

"(A) IN GENERAL. -- THE COMMISSION OR, ON THE AUTHORIZATION OF THE COMMISSION, A SUBCOMMITTEE OF TWO OR MORE MEMBERS OF THE COMMISSION WITH REPRESENTATION FROM BOTH POLITICAL PARTIES, MAY HOLD SUCH HEARINGS AND ACT AT SUCH TIMES AND PLACES AS THE COMMISSION OR SUCH AUTHORIZED SUBCOMMITTEE CONSIDER NECESSARY TO CARRY OUT THE RESPONSIBILITIES OF THE COMMISSION.

"(B) DECISION TO HOLD HEARING. -- THE DECISION TO HOLD A HEARING BY THE COMMISSION, OR THE APPOINTMENT OF A SUBCOMMITTEE TO HOLD HEARINGS, SHALL BE APPROVED BY A MAJORITY OF THE COMMISSION, OR BY A MAJORITY OF THE MEMBERS OF THE COMMISSION PRESENT AT A MEETING AT WHICH AT LEAST A QUORUM OF FOUR MEMBERS IS PRESENT.

"(C) NOTIFICATION. -- NOT LATER THAN 30 DAYS PRIOR TO THE COMMENCEMENT OF ANY HEARING, THE COMMISSION SHALL PUBLISH IN THE FEDERAL REGISTER NOTICE OF THE DATE ON WHICH SUCH HEARING IS TO COMMENCE, THE PLACE AT WHICH SUCH HEARING IS TO BE HELD, AND THE SUBJECT OF SUCH HEARING.

"(D) OPENING STATEMENT. -- THE CHAIR OF THE COMMISSION, OR AN INDIVIDUAL DESIGNATED BY THE CHAIR TO ACT AS THE CHAIR AT A HEARING OF THE COMMISSION, SHALL ANNOUNCE THE SUBJECT OF A HEARING IN THE OPENING STATEMENT OF SUCH HEARING.

"(E) COPY OF RULES. -- A COPY OF THE RULES OF THE COMMISSION SHALL BE MADE AVAILABLE TO ANY WITNESS APPEARING BEFORE THE COMMISSION. A WITNESS COMPELLED BY A SUBPOENA TO APPEAR BEFORE THE COMMISSION, OR REQUIRED TO PRODUCE WRITTEN OR OTHER MATTER FOR THE COMMISSION, SHALL BE SERVED WITH A COPY OF THE RULES OF THE COMMISSION AT THE TIME OF SERVICE OF SUCH SUBPOENA.

"(F) RIGHT OF COUNSEL. --

"(1) IN GENERAL. -- AN INDIVIDUAL WHO IS COMPELLED TO APPEAR BEFORE THE COMMISSION SHALL HAVE THE RIGHT TO BE ACCOMPANIED AND ADVISED BY COUNSEL.

[*S12352] "(2) RIGHT OF COUNSEL. -- AN ATTORNEY WHO REPRESENTS AN INDIVIDUAL APPEARING BEFORE THE COMMISSION SHALL HAVE THE RIGHT TO SUBJECT THE CLIENT OF SUCH ATTORNEY TO REASONABLE EXAMINATION, TO MAKE OBJECTIONS ON THE RECORD, AND TO ARGUE BRIEFLY CONCERNING THE BASIS FOR SUCH OBJECTIONS.

"(G) RIGHT TO A SPEEDY HEARING. --

"(1) IN GENERAL. -- THE COMMISSION SHALL PROCEED WITH REASONABLE SPEED TO CONCLUDE ANY HEARING THAT THE COMMISSION IS CONDUCTING.

"(2) CONVENIENCE AND NECESSITY OF WITNESSES. -- THE COMMISSION SHALL ACT WITH DUE REGARD FOR THE CONVENIENCE AND NECESSITY OF WITNESSES TO A HEARING.

"(H) CENSURE AND EXCLUSION. -- THE CHAIR OF THE COMMISSION OR THE INDIVIDUAL DESIGNATED BY THE CHAIR TO ACT AS CHAIR AT A HEARING, MAY PUNISH BREACHES OF ORDER AND DECORUM BY CENSURE AND EXCLUSION FROM THE HEARINGS.

"(I) DEFAMATION, DEGRADATION, OR INCRIMINATION. --

"(1) IN GENERAL. -- IF THE COMMISSION DETERMINES THAT EVIDENCE OR TESTIMONY AT A HEARING MAY TEND TO DEFAME, DEGRADE, OR INCRIMINATE ANY INDIVIDUAL, THE COMMISSION SHALL RECEIVE SUCH EVIDENCE, TESTIMONY, OR SUMMARY OF SUCH EVIDENCE OR TESTIMONY IN EXECUTIVE SESSION.

"(2) OPPORTUNITY TO APPEAR. -- THE COMMISSION SHALL ALLOW AN INDIVIDUAL WHO IS DEFAMED, DEGRADED, OR INCRIMINATED BY EVIDENCE OR TESTIMONY REFERRED TO IN PARAGRAPH (1) AN OPPORTUNITY TO APPEAR AND BE HEARD IN EXECUTIVE SESSION, WITH A REASONABLE NUMBER OF ADDITIONAL WITNESSES REQUESTED BY SUCH INDIVIDUAL, BEFORE DECIDING TO USE SUCH EVIDENCE OR TESTIMONY.

"(3) PUBLIC SESSION. -- IF THE COMMISSION DETERMINES TO RELEASE OR USE SUCH EVIDENCE OR TESTIMONY REFERRED TO IN PARAGRAPH (1) IN A MANNER THAT PUBLICLY REVEALS THE IDENTITY OF THE INDIVIDUAL WHO WAS DEFAMED, DEGRADED, OR INCRIMINATED, SUCH EVIDENCE OR TESTIMONY, PRIOR TO SUCH PUBLIC RELEASE OR USE, SHALL BE PROVIDED AT A PUBLIC SESSION, AND THE COMMISSION SHALL AFFORD SUCH INDIVIDUAL THE OPPORTUNITY TO --

"(A) APPEAR AS A VOLUNTARY WITNESS;

"(B) FILE A SWORN STATEMENT ON BEHALF OF SUCH INDIVIDUAL; AND

"(C) SUBMIT BRIEF AND PERTINENT SWORN STATEMENTS OF OTHER INDIVIDUALS.

"(4) ADDITIONAL WITNESSES. -- THE COMMISSION SHALL RECEIVE AND DISPOSE OF REQUESTS FROM AN INDIVIDUAL DESCRIBED IN PARAGRAPH (3) TO SUBPOENA ADDITIONAL WITNESSES IN ACCORDANCE WITH PARAGRAPH (3)(C).

"(5) REPORT. -- IF A REPORT OF THE COMMISSION TENDS TO DEFAME, DEGRADE OR INCRIMINATE ANY INDIVIDUAL, SUCH REPORT SHALL BE DELIVERED TO SUCH INDIVIDUAL NOT LATER THAN 30 DAYS PRIOR TO SUCH REPORT BEING MADE PUBLIC IN ORDER TO ALLOW SUCH INDIVIDUAL THE OPPORTUNITY TO MAKE A TIMELY ANSWER TO THE REPORT.

"(6) VERIFIED ANSWER. --

"(A) IN GENERAL. -- EACH INDIVIDUAL DEFAMED, DEGRADED, OR INCRIMINATED IN THE REPORT REFERRED TO IN PARAGRAPH (5) MAY FILE A VERIFIED ANSWER TO THE REPORT WITH THE COMMISSION NOT LATER THAN 20 DAYS AFTER SERVICE OF THE REPORT ON SUCH INDIVIDUAL.

"(B) EXTENSION. -- ON A SHOWING OF GOOD CAUSE, THE COMMISSION MAY GRANT SUCH INDIVIDUAL AN EXTENSION OF TIME TO FILE SUCH ANSWER.

"(C) SUBSTANCE OF ANSWER. -- SUCH ANSWER SHALL PLAINLY AND CONCISELY STATE THE FACTS AND LAW CONSTITUTING THE REPLY OR DEFENSE OF SUCH INDIVIDUAL TO THE CHARGES OR ALLEGATIONS CONTAINED IN A REPORT REFERRED TO IN PARAGRAPH (5).

"(D) APPENDIX TO THE REPORT. -- SUCH ANSWER SHALL BE PUBLISHED AS AN APPENDIX TO SUCH REPORT.

"(E) AMENDMENT OF THE ANSWER. -- THE RIGHT TO ANSWER WITHIN THE APPROPRIATE TIME LIMITATIONS, PERMITTED UNDER SUBPARAGRAPH (A), AND TO HAVE SUCH ANSWER ANNEXED TO SUCH REPORT, SHALL BE LIMITED ONLY BY THE POWER OF THE COMMISSION TO AMEND SUCH ANSWER TO EXCLUDE MATTER THAT THE COMMISSION DETERMINES HAS BEEN INSERTED IN SUCH ANSWER SCANDALOUSLY, PREJUDICEDLY, OR UNNECESSARILY.

"(J) RELEASE OF EVIDENCE OR TESTIMONY. -- NO EVIDENCE, TESTIMONY, OR SUMMARY OF SUCH EVIDENCE OR TESTIMONY, TAKEN IN EXECUTIVE SESSION MAY BE RELEASED OR USED IN PUBLIC SESSIONS WITHOUT THE CONSENT OF THE COMMISSION.

"(K) SWORN STATEMENTS. --

"(1) IN GENERAL. -- IN THE DISCRETION OF THE COMMISSION, WITNESSES IN A HEARING MAY SUBMIT BRIEF AND PERTINENT SWORN STATEMENTS IN WRITING FOR INCLUSION IN THE RECORD OF SUCH HEARING.

"(2) RELEVANCE. -- THE COMMISSION SHALL DETERMINE THE RELEVANCE OF THE TESTIMONY AND EVIDENCE DESCRIBED IN PARAGRAPH (1) AT A HEARING.

"(L) COPY OR TRANSCRIPT. --

"(1) IN GENERAL. -- AN ACCURATE TRANSCRIPT SHALL BE MADE OF THE TESTIMONY OF ALL WITNESSES AT ALL HEARINGS, INCLUDING BOTH PUBLIC OR

EXECUTIVE SESSIONS, OF THE COMMISSION OR OF ANY SUBCOMMITTEE OF THE COMMISSION.

"(2) RIGHT TO TRANSCRIPT. -- AN INDIVIDUAL WHO SUBMITS DATA OR EVIDENCE SHALL BE ENTITLED TO INSPECT OR, ON PAYMENT OF LAWFULLY PRESCRIBED COSTS, PROCURE A COPY OR TRANSCRIPT OF SUCH DATA OR EVIDENCE.

"(3) EXCEPTION. -- PARAGRAPH (2) SHALL NOT APPLY TO A WITNESS IN A HEARING HELD IN EXECUTIVE SESSION. SUCH WITNESS SHALL BE ALLOWED TO INSPECT THE OFFICIAL TRANSCRIPT OF THE TESTIMONY OF SUCH WITNESS.

"(4) OBTAINING COPIES OF TRANSCRIPT. -- A COPY OF THE TRANSCRIPT FOR A PUBLIC SESSION OF A HEARING MAY BE OBTAINED BY A MEMBER OF THE GENERAL PUBLIC ON THE PAYMENT OF THE COST OF SUCH COPY.

"(M) PAYMENT OF WITNESSES. --

"(1) IN GENERAL. -- A WITNESS ATTENDING ANY HEARING OF THE COMMISSION SHALL BE PAID THE SAME FEES AND MILEAGE COSTS AS WITNESSES IN THE COURTS OF THE UNITED STATES.

"(2) MILEAGE PAYMENTS. -- MILEAGE PAYMENTS SHALL BE TENDERED TO A WITNESS UNDER PARAGRAPH (1) ON SERVICE OF A SUBPOENA ISSUED ON BEHALF OF THE COMMISSION OR ANY SUBCOMMITTEE OF THE COMMISSION.

"(N) SUBPOENA. --

"(1) IN GENERAL. -- A SUBPOENA FOR THE ATTENDANCE AND TESTIMONY OF A WITNESS OR THE PRODUCTION OF WRITTEN OR OTHER MATTER FOR THE COMMISSION MAY BE --

"(A) ISSUED IN ACCORDANCE WITH SUBSECTION (M) AND PARAGRAPH (2) OF THIS SUBSECTION, WITH THE SIGNATURE OF THE CHAIR OF THE COMMISSION OR OF THE APPROPRIATE SUBCOMMITTEE; AND

"(B) SERVED BY ANY INDIVIDUAL DESIGNATED BY THE CHAIR.

"(2) SUBPOENA AUTHORITY OUTSIDE OF JURISDICTION. --

"(A) IN GENERAL. -- THE COMMISSION MAY NOT ISSUE ANY SUBPOENA FOR THE ATTENDANCE AND TESTIMONY OF WITNESSES, OR FOR THE PRODUCTION OF WRITTEN OR OTHER MATTER, THAT WOULD REQUIRE THE PRESENCE OF THE WITNESS SUBPOENAED AT A HEARING TO BE HELD OUTSIDE OF THE STATE WHERE SUCH WITNESS IS FOUND, RESIDES, IS DOMICILED, TRANSACTS BUSINESS, OR HAS APPOINTED AN AGENT FOR RECEIPT OF SERVICE OF PROCESS.

"(B) EXCEPTION. -- SUBPARAGRAPH (A) SHALL NOT APPLY IF THE ATTENDANCE AND TESTIMONY OF A WITNESS OR THE PRODUCTION OF WRITTEN OR OTHER MATTER IS SUBPOENAED AT A HEARING THAT IS HELD WITHIN 50 MILES OF THE PLACE WHERE SUCH WITNESS IS FOUND, RESIDES, IS DOMICILED, TRANSACTS BUSINESS, OR HAS APPOINTED AN AGENT FOR RECEIPT OF SERVICE OF PROCESS.

"(3) FAILURE TO OBEY SUBPOENA. --

"(A) IN GENERAL. -- IF AN INDIVIDUAL REFUSES TO OBEY A SUBPOENA, A DISTRICT COURT OF THE UNITED STATES, A UNITED STATES COURT OF ANY TERRITORY OR POSSESSION, OR THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, WITHIN THE JURISDICTION OF THE HEARING FOR WHICH THE COMMISSION SUBPOENAED SUCH INDIVIDUAL OR THAT SUCH INDIVIDUAL IS FOUND, RESIDES, IS DOMICILED, TRANSACTS BUSINESS, OR HAS APPOINTED AN AGENT FOR RECEIPT OF SERVICE OF PROCESS, SHALL, ON APPLICATION BY THE ATTORNEY GENERAL OF THE UNITED STATES, HAVE JURISDICTION TO ORDER SUCH INDIVIDUAL TO APPEAR BEFORE THE COMMISSION OR A SUBCOMMITTEE OF THE COMMISSION IN ORDER TO PRODUCE PERTINENT, RELEVANT, AND NONPRIVILEGED EVIDENCE AS ORDERED BY THE COMMISSION, OR TO GIVE TESTIMONY CONCERNING THE MATTER UNDER INVESTIGATION BY THE COMMISSION.

"(B) CONTEMPT. -- A FAILURE TO OBEY AN ORDER OF A COURT ISSUED UNDER SUBPARAGRAPH (A) MAY BE PUNISHED BY SUCH COURT AS CONTEMPT.

"(4) REQUESTS TO SUBPOENA ADDITIONAL WITNESSES. -- THE CHAIR OF THE COMMISSION SHALL RECEIVE AND DISPOSE OF REQUESTS TO SUBPOENA ADDITIONAL WITNESSES.

"(O) ADMINISTERING OATHS AND TAKING STATEMENTS. -- EACH MEMBER OF THE COMMISSION SHALL HAVE THE POWER AND AUTHORITY TO ADMINISTER OATHS OR TAKE STATEMENTS OF WITNESSES UNDER AFFIRMATION DURING A HEARING OF THE COMMISSION.

"(P) ADMINISTRATIVE PROCEDURE AND FREEDOM OF INFORMATION. -- SUBCHAPTER II OF CHAPTER 5 OF TITLE 5 OF THE UNITED STATES CODE, RELATING TO ADMINISTRATIVE PROCEDURE AND FREEDOM OF INFORMATION, SHALL, TO THE EXTENT NOT INCONSISTENT WITH THIS SECTION, APPLY TO THE COMMISSION.

"SEC. 7. FEDERAL AGENCIES.

"EACH FEDERAL AGENCY SHALL COOPERATE FULLY WITH THE COMMISSION TO ENABLE THE COMMISSION TO CARRY OUT EFFECTIVELY THE FUNCTIONS AND DUTIES OF THE COMMISSION.

"SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

"THERE ARE AUTHORIZED TO BE APPROPRIATED FOR EACH FISCAL YEAR, SUCH SUMS AS MAY BE NECESSARY TO CARRY OUT THIS ACT.".

SEC. 3. EFFECTIVE DATE.

THIS ACT AND THE AMENDMENT MADE BY THIS ACT SHALL BECOME EFFECTIVE ON JANUARY 1, 1990.

## xxiii. 140 Cong Rec S 11045: Statements on Introduced Bills and Joint Resolutions

FOCUS - 25 of 28 DOCUMENTS

CONGRESSIONAL RECORD -- *Senate*

Tuesday, August 9, 1994
(Legislative day of Monday, August 8, 1994)

103rd Congress 2nd Session

*140 Cong Rec S 11045*

REFERENCE: Vol. 140 No. 109

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

TEXT:

[*S11045]

By Mr. SIMON:

S. 2372. A bill to reauthorize for 3 years the Commission on Civil Rights, and for other purposes; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1994

Mr. SIMON. Mr. President, I introduce legislation to reauthorize the U.S. Commission on Civil Rights. The authorization for the Commission expires on September 30, 1994, and the Constitution Subcommittee, which I chair, has jurisdiction over reauthorization.

Since 1957, when the U.S. Commission on Civil Rights was first established, our Nation has made considerable progress in fulfilling the promise of equal rights. But the problems of discrimination have hardly been solved; in many ways, they have just grown more complex. The Nation continues to need a Civil Rights Commission that is true to its original purpose as an independent, nonpartisan, factfinding agency.

Mr. President, it is no secret that there have been some problems at the Commission over the years, particularly during the 1980's. Many who have worked tirelessly in the civil rights community for years, and who have observed and worked with the Commission during that time, continue to have some skepticism about the work of the Commission. Frankly, the Commission needs to do a better job of reaching out to the organizations and communities with which it has worked closely in the past.

The U.S. Commission on Civil Rights should not just react to the civil rights issues of the day, but should provide leadership on these issues. It is my hope that the Commission can once again raise the consciousness of the Nation on civil rights matters. I believe that the Commission is now headed in that direction.

The legislation I introduce today will reauthorize the Commission for a 3 year period through the end of fiscal year 1997. It retains the mission and organizational structure of the Commission

but authorizes the preparation of public service announcements and advertising campaigns to discourage discrimination or the denial of equal protection of the laws based on color, race, religion, sex, age, disability, or national origin.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record , as follows:

S. 2372 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1994".

SEC. 2. COMMISSION ON CIVIL RIGHTS.

Section 5(a) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c(a)) is amended to read as follows:

"(a) Investigatory and Other Duties.- The Commission shall-

"(1) investigate allegations, in writing, under oath or affirmation, relating to deprivations of civil rights based on color, race, religion, sex, age, disability, or national origin, or as a result of any pattern or practice or fraud, or denial of the right to vote and have votes counted; and

"(2) study, collect, make appraisals of, serve as a national clearinghouse for information on, and prepare public service announcements and advertising campaigns to discourage discrimination or the denial of equal protection of the laws, including the administration of justice, based on color, race, religion, sex, age, disability, or national origin.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act $ 9,500, 000 for fiscal year 1995.

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act (42 U.S.C. 1973f) is amended by striking "1994" and inserting "1997".

## xxiv. 140 Cong Rec H 10459: Civil Rights Commission Amendments Act of 1994

FOCUS - 27 of 28 DOCUMENTS

CONGRESSIONAL RECORD -- *House*

Monday, October 3, 1994

103rd Congress 2nd Session

*140 Cong Rec H 10459*

REFERENCE: Vol. 140 No. 141

TITLE: CIVIL RIGHTS COMMISSION AMENDMENTS ACT OF 1994

SPEAKER: MR. BROOKS

TEXT:

[*H10459]

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 4999) to amend the United States Commission on Civil Rights Act of 1983, as amended.

The Clerk read as follows:

H.R. 4999 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

SEC. 2. AMENDMENT OF 1983 ACT.

That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Civil Rights Commission Act of 1983'.

"SEC. 2. ESTABLISHMENT OF COMMISSION.

"(a) Generally .-There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the 'Commission').

"(b) Membership .-The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms .-The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson .-(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) Removal of Members .-The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) Quorum .-5 members of the Commission constitute a quorum of the Commission.

"SEC. 3. DUTIES OF THE COMMISSION.

"(a) Generally .-The Commission-

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations-

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

"(2) shall-

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) Limitations on Investigatory Duties .-Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any

fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) Reports .-

"(1) Annual report .-The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) Other reports generally .-The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

"(d) Advisory Committees .-The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

"(e) Hearings and Ancillary Matters .-

"(1) Power to hold hearings .-The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) Power to issue subpoenas .-The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) Witness fees .-A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) Depositions and interrogatories .-The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) Limitation Relating to Abortion .-Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"SEC. 4. ADMINISTRATIVE PROVISIONS.

"(a) Staff .-

"(1) Director .-There shall be a full-time staff director for the Commission who shall-
[*H10460]

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission.

"(2) Other personnel .-Within the limitation of its appropriations, the Commission may-

"(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) Compensation of Members .-

"(1) Generally .-Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on a daily basis for time spent in the work of the Commission.

"(2) Persons otherwise in Government service .-Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) Voluntary or Uncompensated Personnel .-The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) Rules .-

"(1) Generally .-The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) Continuation of old rules .-Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) Cooperation .-All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated, to carry out this Act $ 9,500, 000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

"SEC. 6. TERMINATION.

"This Act shall terminate on September 30, 1995."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. Brooks ) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. Hyde ) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. Brooks ).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, H.R. 4999 authorizes $ 9.5 million for the activities of the U.S. Civil Rights Commission for fiscal year 1995. It authorizes the Commission to conduct antidiscrimination campaigns, and maintains the prohibition against new regional offices. It also clarifies the restrictions on uncompensated services by Commissioners. This language is necessary because of a recent GAO report which found some questionable travel expenditures by some Commissioners.

I wish to thank the gentleman from California (Mr. Edwards ), chairman of the Subcommittee on Civil and Constitutional Rights, for his leadership on this and every other civil rights issue over the last 30 years, and the gentleman from Illinois (Mr. Hyde ), the ranking member, also deserves praise for bringing this legislation forward.

I urge the Members to support this bill.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, let me say at the outset that the gentleman from California (Mr. Edwards ) will indeed be missed. I would like to think that he is such a part of this place though that, to reprise a term, I believe, of Oliver Wendell Holmes, he will be a brooding omnipresence over this body rather than someone who is retired and left us. He has been a great person to work with and made so many solid contributions to the jurisprudence, to the civil rights of this country, that his mark is established, and I have been proud to work with him.

The same thing is true with the gentleman from Texas (Mr. Brooks ) who is, among other things, fun to work with. He has a great sense of humor, and he gets things done, and it has been a real pleasure working with him.

And lest this turn into a homecoming celebration, Mr. Speaker, let me say this legislation, as approved by the Committee on the Judiciary, will extend the life of the U.S. Commission on Civil Rights for 1 year. This legislation maintains the current structure of the Commission, eight Commissioners appointed by the President and Congress, and gives the Commission new authority to make public service announcements within the scope of its statutory mandate. The bill, as reported by the Committee on the Judiciary, incorporates several changes requested by the minority which were consistent with the 1983 act. The bill also authorizes appropriation of $ 9.5 million, which is consistent with the amount appropriated for fiscal year 1995.

Mr. Speaker, I believe the Commission is compromised of men and women of good will who can work together to speak out against discrimination and in favor of equality under the law, and so I enthusiastically support this legislation.

I do want to thank the chairman of the committee, the gentleman from California (Mr. Edwards ), for his cooperation on moving this bill, and the gentleman from Texas (Mr. Brooks ) for bringing this bill forward, as well as to the staffs, without whose indispensable help we could not have brought this bill forward.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Subcommittee on Civil and Constitutional Rights, the gentleman from California (Mr. Edwards ), a longtime supporter of civil rights.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I thank my chairman, the gentleman from Texas (Mr. Brooks ), for bringing this bill promptly to the floor, and I thank him for his gracious personal remarks, as I thank my colleague, the gentleman from Illinois (Mr. Hyde ), the ranking minority member of the subcommittee. It has been just an honor and a privilege to serve with Mr. Hyde for many years on this subcommittee. We have done some good things, and we worked together very hard.

Mr. Speaker, this bill, ably and accurately described by both the gentleman from Texas (Mr. Brooks ) and the gentleman from Illinois (Mr. Hyde ) does extend the life of the Commission for a year and was approved unanimously by the subcommittee and by the full committee. I urge its passage.

Mr. Speaker, in 1957, creating a U.S. Commission on Civil Rights was a radical idea. It is the only bipartisan, independent Federal factfinding agency reviewing discrimination on the basis of race, color, religion, sex, age, handicap, and national origin or in the administration of justice.

Perhaps it is a temporary agency because we want to believe that some day our racially and culturally diverse Nation will become more unified. I believe it is a good thing that our national will embraces such unity.

For most of its almost 40 years existence the Commission has been our Nation's conscience on civil rights-reminding us of where we have been and where we need to go.

Since it has no enforcement authority, its influence comes from its scholarly reports.

Sadly, we all remember that period, beginning in 1980, when the Commission turned away from its factfinding mission, Congress seriously considered abolishing the agency. However, a compromise bill reconstituting the Commission was enacted in 1983. Commission membership was expanded and the method for appointing Commissioners and selecting the chairperson, vice chairperson and staff director was changed. [*H10461]

The Commission still has not fully resumed its statutory mandate. Those who have followed Commission meetings and hearings for the past 2 years notice an absence of scholarly debate and a penchant for bickering over administrative rather than policy matters.

From 1957 to 1983, the Commissioners and staff director were appointed by the President with the advice and consent of the Senate. I believe there is a direct connection between the Commission's past reputation for scholarly work and the rigors of Senate confirmation. And if, after this reauthorization, the Commission fails to fully resume its factfinding mandate, I hope the next Congress will consider returning to Senate confirmation.

H.R. 4999 rewrites more concisely the 1983 Civil Rights Commission Act. For example, it eliminates provisions of the 1983 act regarding the conduct of Commission hearings. The

provisions are unnecessary because the Commission's hearings are subject to the Sunshine in Government Act.

The bill restates the Commission's longstanding factfinding duties with respect to discrimination and denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin or in the administration of justice.

New authority is granted to the Commission to prepare public service announcements and advertising campaigns to discourage discrimination. The Commission is also authorized to use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

Following publication of a report by the General Accounting Office in August 1994, entitled "Commissioners' Travel Activities", the bill clarifies that the longstanding provision prohibiting the Commission from accepting or using the services of voluntary or uncompensated persons applies to the Commissioners.

The Commission's life is extended for 1 year and $ 9,500,000 is authorized for appropriations in fiscal year 1995. The committee expects that the modest increase in appropriations authorized by this bill will enhance the Commission's ability to return to its factfinding mandate.

Since 1957, when the Commission was created, civil rights issues and solutions have become more complex. I have no doubt that our Nation will benefit greatly from the advice and counsel of a Civil Rights Commission that is committed to vigorously carrying out its statutory mandate. I urge this Commission to meet that challenge and I urge your support of H.R. 4999.

Mr. HYDE Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. Fish ), the ranking Republican on the Committee on the Judiciary.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, although this Nation has taken monumental steps toward eradicating discrimination and achieving equality for men and women of all races and creeds, there is still much work to be done. The U.S. Commission on Civil Rights plays a pivotal role in helping to point out where we have fallen short and what steps we can take to insure that our civil rights laws are fairly and effectively enforced.

Our experience over the past 3 years, since we last authorized the Commission, is that it has taken steps to becoming more focused and more productive in carrying out its congressional mandate.

H.R. 4999, as reported by the Committee on the Judiciary, authorizes the Commission for 1 year and grants explicit authority to the Commission to make public service announcements. Otherwise, the bill maintains the current structure of the Commission.

I support this legislation and urge my colleagues to do so as well.

Mr. Speaker, I am glad to have the opportunity to speak on this bill. My friend, the gentleman from California (Mr. Edwards ) is leaving the Congress after 3 decades as the congressional watchdog of civil rights abuses and discrimination and shaping our responses. I have learned from Don Edwards and appreciate having worked with him on every civil rights bill considered in the last 25 years. I say to the gentleman, "The Congress and country will miss you Don Edwards."

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the majority party has chairmen, and they get courthouses named after them, and the minority party sometimes is tolerated and retires with kind of in-house glory. I do not want to let this moment pass without saying that the gentleman from New York (Mr. Fish ) is the nicest person I have ever met. I have had more sheer joy, pleasure, and professional satisfaction from working with him over these years, and, as he leaves, he will be painfully missed, a gentleman in the fullest sense of the word, and I tried to think of a way to encapsulate him in his chosen profession, and I would refer to him as a diamond in a sea of zircons. He will be sorely missed.

1250

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like at this time to endorse the comments of my very erudite colleague, the gentleman from Illinois ( Mr. Hyde ).

Mr. Speaker, I yield to our colleague, the gentleman from California ( Mr. Edwards ).

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I am filled with humility and a sense of sadness about leaving colleagues such as those who have spoken this morning. We have worked together in ways that we thought were for the best interests of our country. The gentleman from New York ( Mr. Fish ) and the gentleman from Illinois ( Mr. Hyde ) were amongst the authors of the very important 1982 rewriting of the Voting Rights Act that made it really effective throughout the country.

The gentleman from Illinois ( Mr. Hyde ) and I traveled throughout the South and other States and found to our dismay that even 17 years after the Voting Rights Act first had been passed, voting privileges were being denied wholesale to Americans because of their race. We worked together, and the gentleman from New York ( Mr. Fish ), as usual, manfully assisted us as he has done on civil rights and constitutional rights throughout his entire career.

Indeed, Mr. Speaker, I am just honored by this. When I go into retirement in a few months, I am going to look back with nostalgia at the hours and days and months and years I have worked with these finest of public servants.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey ( Mr. Hughes ).

Mr. HUGHES. Mr. Speaker, I thank the chairman of the Committee on the Judiciary for yielding this time to me, and I rise in very strong support of H.R. 4999, the Civil Rights Commission Reauthorization Act.

I take this time just to offer my sincerest congratulations and very best wishes to Congressman Don Edwards, the distinguished chairman of the subcommittee, not just for this bill but for really all his years of service. He has indeed been the guardian of the Constitution for about eight decades. Nobody has worked harder for civil rights and constitutional rights than has Don Edwards over the years.

And the gentleman from New York, Mr. Hamilton Fish , is also leaving the Congress at the end of this session. Ham Fish is unquestionably one of the experts on immigration as well as civil rights, one of the earliest supporters of civil rights legislation in this Congress.

This body is going to sadly miss Don Edwards and Hamilton Fish. They have been great Members of this body. They are the epitome of what is right about this institution. There are a lot of things right. We hear about all the things that are wrong about Congress and the country, but these are examples of what is right about this institution, and I wish them every success in the years ahead.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Montgomery ). The question is on the motion offered by the gentleman from Texas (Mr. Brooks ) that the House suspend the rules and pass the bill, H.R. 4999, as amended. [*H10462]

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2372) to reauthorize for 3 years the Commission on Civil Rights, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2372 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1994".

SEC. 2. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act $ 9,500, 000 for fiscal year 1995.".

SEC. 3. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act (42 U.S.C. 1973f) is amended by striking "1994" and inserting "1997".

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Brooks moves to strike all after the enacting clause of S. 2372 and insert in lieu thereof the provisions of H.R. 4999, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend the United States Commission on Civil Rights Act of 1983."

A motion to reconsider was laid on the table.

A similar bill (H.R. 4999) was laid on the table.

## xxv. 140 Cong Rec S 14406: Civil Rights Commission Reauthorization Act of 1994

FOCUS - 28 of 28 DOCUMENTS

CONGRESSIONAL RECORD -- *Senate*

Thursday, October 6, 1994
(Legislative day of Monday, September 12, 1994)

103rd Congress 2nd Session

*140 Cong Rec S 14406*

REFERENCE: Vol. 140 No. 144

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1994

SPEAKER: MR. FORD

TEXT: .

[*S14406]

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 2372) to reauthorize for 3 years the Commission on Civil Rights, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives: Resolved, That the bill from the Senate (S. 2372) entitled "An Act to reauthorize for three years the Commission on Civil Rights, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

SEC. 2. AMENDMENT OF 1983 ACT.

That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Civil Rights Commission Act of 1983'.

"SEC. 2. ESTABLISHMENT OF COMMISSION.

"(a) Generally.-There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.-The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.-The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson.-(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) Removal of Members.-The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) Quorum.-5 members of the Commission constitute a quorum of the Commission.

"SEC. 3. DUTIES OF THE COMMISSION.

"(a) Generally.-The Commission-

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations-

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

"(2) shall-

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) Limitations on Investigatory Duties.-Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) Reports.-

"(1) Annual report.-The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) Other reports generally.-The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

"(d) Advisory Committees.-The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee

in each State and the District of Columbia composed of citizens of that State or District.

"(e) Hearings and Ancillary Matters.-

"(1) Power to hold hearings.-The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) Power to issue subpoenas.-The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) Witness fees.-A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) Depositions and interrogatories.-The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) Limitation Relating to Abortion.-Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"SEC. 4. ADMINISTRATIVE PROVISIONS.

"(a) Staff.-

"(1) Director.-There shall be a full-time staff director for the Commission who shall-

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission. [*S14407]

"(2) Other personnel.-Within the limitation of its appropriations, the Commission may-

"(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) Compensation of Members.-

"(1) Generally.-Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

"(2) Persons otherwise in Government service.-Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) Voluntary or Uncompensated Personnel.-The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) Rules.-

"(1) Generally.-The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) Continuation of old rules.-Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) Cooperation.-All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated, to carry out this Act $ 9,500, 000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

"SEC. 6. TERMINATION.

"This Act shall terminate on September 30, 1995."

Amend the title so as to read: "An Act to amend the United States Commission on Civil Rights Act of 1983.".

AMENDMENT NO. 2629

(Purpose: To extend the reauthorization period for an additional year)

Mr. FORD. Mr. President, I move the Senate concur with the House amendments with a further amendment I now send to the desk on behalf of Senator Simon.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. Ford), for Mr. Simon, proposes an amendment numbered 2629:

On page 10, line 12, strike "September 30, 1995" and insert "September 30, 1996".

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## III. Court Opinions

## A. In re George C. Wallace, W. A. Stoles, Sr., Grady Rogers, E.P. Livingston, M.T. Evans, and J.W. Spencer 170 F. Supp 63; 1959 U.S. Dist.

LEXSEE 170 F. SUPP. 63

**In re George C. WALLACE, W. A. Stokes, Sr., Grady Rogers, E. P. Livingston, M. T. Evans, and J. W. Spencer**

**No. 1487-N**

**UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

***170 F. Supp. 63; 1959 U.S. Dist. LEXIS 3680***

**January 9, 1959**

**COUNSEL:** [**1]

John Patterson, Atty. Gen., of Alabama, E. L. Rinehart, Montgomery, Ala., (Ralph Smith, Jr., Montgomery, Ala., of counsel), for all respondents.

Chauncey Sparks, Archie Grubb, Preston C. Clayton and Seymore Trammell, Eufaula, Ala., for respondent George C. Wallace, Judge of the Third Judicial Circuit of Alabama.

Joseph F. Johnston, Birmingham, Ala., for Alabama State Bar, as amicus curiae.

Joseph M. F. Ryan, Jr., D. Robert Owen, Attys., Dept. of Justice, Washington, D.C., W. Wilson White, Asst. Atty. Gen., for the United States.

**OPINIONBY:**

JOHNSON

**OPINION:**

[*65]

This is the matter of civil action 1487-N, styled In re: George C. Wallace, W. A. Stokes, Sr., Grady Rogers, E. P. Livingston, M. T. Evans, and J. W. Spencer. This is an oral opinion and order in this matter upon the motion filed this date for further relief, filed upon behalf of the Attorney General of the United States by his attorneys and for the purposes of further specific relief in this cause, in accordance with paragraph four of the order entered herein January 5, 1959. The order made and entered in this cause by this Court on January 5, 1959, was presented to this Court by counsel for the United States, [**2] amicus curiae counsel appearing with the permission of this Court and at the request of the Alabama

Bar Association, and counsel for George C. Wallace, W. A. Stokes, Sr., Grady Rogers, E. P. Livingston, M. T. Evans, and J. W. Spencer; several attorneys appearing and representing at that time George C. Wallace, including John Patterson, Chauncey Sparks, Preston C. Clayton, Seymore Trammell, and Archie Grubb. At the time said order was presented to this Court by all of said counsel, this Court, prior to accepting, signing, and filing said agreed-upon order, in response to inquiry by counsel for George C. Wallace, stated to said counsel, who were at that time appearing for and on behalf of George C. Wallace, that 'the words 'relevant to the Commission's inquiry'' meant the registration and voting records in the custody of the said George C. Wallace. This statement concerning relevancy of said records was accepted by George C. Wallace by and through his counsel, whom he elected to appear [*66] through without objection, and this Court was assured by all concerned that said agreement would be carried out fully and in good faith. Said agreed-upon order was executed and filed by this [**3] Court upon that basis. It now appears that the said George C. Wallace has not and still refuses to carry out the said agreement entered into with this Court by the counsel that he elected to appear before this Court through, even in the face of -- and as this Court is advised -- the advice by his counsel.

Now, upon consideration of said motions, including the motion now made by the Attorney General of the United States for further relief, and upon consideration of the statements made by counsel to the Court in chambers, upon consideration of the written briefs filed in support of said motions and in opposition thereto, this Court specifically finds that the Commission on Civil Rights is a temporary agency of the United States Government created by the Civil Rights Act of 1957, under Public Law 85-315, dated September 9, 1957, *42 U.S.C.A. § 1975* et seq.; that under Section 104(a) of that Act the Commission is empowered and directed to:

'(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; [**4] which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

'(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

'(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.'

The Act also empowers the Commission, or any authorized subcommittee thereof, to hold such public hearings and act at such times and places as the Commission may deem advisable. Said Act also empowers the Commission to require the attendance and testimony of witnesses or the production of written or other matters. That part of the Act that empowers the Commission, insofar as that is concerned, is Section 105(f).

In case of contumacy or refusal to obey a subpoena issued and caused to be served by the Commission, the Act confers jurisdiction upon 'any district court of the United States * * * within the jurisdiction of which the inquiry is carried on * * * upon application by the Attorney General of the United States * * * to issue to such person an order requiring such person to appear before [**5] the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.' Reference is made to Section 105(g) of the Act.

The Commission's announcement made on October 23, 1958, set a public hearing to be held in Montgomery on December 8, 1959. It was further announced that said hearing would be to investigate complaints by certain citizens of the United States concerning deprivations of the right to vote by reason of race or color. It was on said date further announced that the voting and registration records of several counties of the State of Alabama would be sought. On October 21, 1958, two investigators for this Commission sought permission to inspect certain voting and registration records of Macon County, Alabama, and insofar as any comment this Court makes concerning the records of Macon County, Alabama, a provision made in the latter part of this order with reference to the voting and registration records in that County will reflect that the registrars of Macon County, Alabama, that is, Registrars [**6] Livingston and Rogers, and those records, are no longer in this case. This request was refused by the registrars who were then custodians of those records. [*67] It was publicly announced that the refusal was upon the advice of the Attorney General for the State of Alabama.

Prior to this hearing, by subpoenas served December 2, 3, and 4, 1958, the movants, as officials of the State of Alabama (and the movants' official positions are: W. A. Stokes, Sr., and J. W. Spencer, members of the Board of Registrars of Barbour County, Alabama; M. T. Evans, member of the Board of Registrars of Bullock County, Alabama; E. P. Livingston and Grady Rogers were members of the Board of Registrars of Macon County, Alabama; and George C. Wallace is Judge of Third Judicial Circuit of Alabama, comprising Barbour, Bullock, and Dale Counties) were ordered to appear on December 8, 1958, before the Commission at Montgomery and to produce certain voting and registration records and give testimony concerning the matters then under investigation. Five appeared before the Commission and refused to give testimony and failed to produce records. Movant Wallace failed to appear. This Court did, therefore, [**7] upon written verified application, with proper affidavits and documents attached thereto, issue its order of December 11, 1958 -- an ex parte order.

The movants, with the exception of Livingston and Rogers who will be dismissed, by the motions now presented and under consideration by this Court contend:

(1) That enforcement of the subpoenas would constitute an illegal invasion of the sovereignty of the State of Alabama.

(2) That enforcement would violate the principle of comity.

(3) That enforcement would constitute an improper inquiry into judicial acts of judicial officers.

(4) That this Court is without jurisdiction to enforce compliance with said subpoenas.

(5) That Alabama law forbids removal of records sought from counties in which they are located, and also the records are too bulky and voluminous to produce, and also the records are privileged and confidential.

(6) That the movant-registrars no longer have custody of these records.

A somewhat detailed though combined discussion of these several points is considered necessary and appropriate.

The authority delegated to the Federal Government by the Fifteenth Amendment to the Constitution of the United States is undoubtedly [**8] the authority under which the Congress of the United States was acting when the Civil Rights Act of 1957 was passed. The provision in the Act providing for investigation of alleged discriminatory practices, including inspecting of voting and other pertinent records, must be considered to be an essential step in the process of enforcing and protecting the right to vote regardless of

color, race, religion, or national origin. That part of the Act is, therefore, by this Court considered 'appropriate legislation' within the meaning of Section 2 of the Fifteenth Amendment.

The sovereignty of the State of Alabama, or of any other of the states, must yield, therefore, to this expression of the Congress of the United States, since this expression of Congress -- by this Act -- was passed in a proper exercise of a power specifically delegated to the Federal Government, and the Court cites *Ex parte Siebold, 100 U.S. 371, 25 L.Ed. 717.* This is necessarily true even though the states possess concurrent legislative jurisdiction with respect to voting, since the Federal Government, and its law, is supreme in this area. The Court cites *Kohl v. United States, 91 U.S. 367, 23 L.Ed. 449.* [**9]

The concept of the sovereignty of the states is embodied in the Tenth Amendment to the Constitution of the United States, this amendment providing that those powers are reserved to the states which have not been 'delegated to the United States by the Constitution, nor prohibited by it to the States.'

[*68] Here we have involved the very powers which the Constitution of the United States says are not reserved to the states. See *United States v. Reese, 92 U.S. 214, 23 L.Ed. 563; United States v. Darby, 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609;* and *Fernandez v. Wiener, 326 U.S. 340, 66 S.Ct. 178, 90 L.Ed. 116.*

The fact that the State of Alabama voting and registration records are involved in this case does not alter the legal principle at all. *In re Cohen, 2 Cir., 62 F.2d 249; United States v. Ponder, 4 Cir., 238 F.2d 825; Endicott Johnson Corporation v. Perkins, 317 U.S. 501, 63 S.Ct. 339, 87 L.Ed. 424.*

Thus, it must be generally concluded, and this Court now concludes, that since the Congress of the United States did have the authority to pass the Civil Rights Act of 1957 and that said authority is supreme in this field as opposed to any authority of the states, and since [**10] the Commission on Civil Rights was in issuing the subpoenas in question acting pursuant to that Act, and since this Court was in issuing its order upon the application of the Attorney General of the United States also acting pursuant to said Act, the contention that movants make that enforcement of the subpoenas will constitute an illegal invasion of the sovereignty of the State of Alabama and the contention that this Court is without jurisdiction to enforce compliance with said subpoenas are without merit and cannot stand.

The question movants raise concerning imporper inquiry into judicial acts of the judicial officers must for this particular case be discussed separately as to the movant Wallace, who is a Circuit Judge of the State of Alabama, and the other movants, who are registrars of the counties involved.

As to Judge Wallace, no appearance and no testimony from him is, by this Court, required, since he, as this Court understands the matter, is only called upon to respond to a subpoena duces tecum. Any other understanding or any other construction that may be placed upon the Commission's subpoena is, by this Court, cancelled. Such a subpoena, a subpoena duces tecum, requires [**11] no testimony, only production of records. Such production can be made, if he sees fit, by clerks or agents. Thus the questions raised by him concerning his schedule and absence from his circuit need no discussion.

Concerning the requirement of Wallace to produce these records, it is sufficient to say, and this Court now says, that there is no concept of judicial privilege or immunity which relieves him of this requirement. Legislation enacted pursuant to the Federal Constitution is binding on all state officials, including the judges. This question was laid to rest by the Supreme Court of the United States in *Ex parte*

*Virginia, 100 U.S. 339, 25 L.Ed. 676,* where the court stated:

'(it has) reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws.'

That same principle of law [**12] is applicable here in this case where the Fifteenth Amendment to the Constitution of the United States is involved.

Other cases have been equally precise in laying down this principle that state action, in whatever form, will not be permitted to prevent the proper exercise of a proper federal power, and this Court cites *United States v. Peters, 5 Cranch 115, 9 U.S. 115, 3 L.Ed. 53; Faubus v. United States, 8 Cir., 254 F.2d 797;* and *Sterling v. Constantin, 287 U.S. 378, 53 S.Ct. 190, 77 L.Ed. 375.*

Thus this Court now concludes that judicial status does not confer a [*69] privilege upon Judge Wallace to disregard the positive command of the law -- here the Fifteenth Amendment -- and that such status does not give immunity from inquiry which is duly authorized, as this inquiry is. This does not mean to say or imply that a judge is not immune from investigation or inquiry into his judicial acts; he is. For example, this Commission, nor indeed the Congress of the United States, could not inquire of Judge Wallace as to why he impounded these records or what factors he took into consideration when he impound these records. However, in the case now presented no judicial act [**13] or decision of Judge Wallace need be nor is questioned. It may be, and this Court will for the time being -- and I emphasize 'for the time being,' -- assume that the order impounding the records of Bullock and Barbour Counties were proper and in good faith. The only question presented is the right of the Commission on Civil Rights to see those records.

Now, generally, when a direct conflict occurs between state and federal action in a field such as this field, the states must yield. For the law to be otherwise would render the supremacy clause in the Constitution of the United States ineffective, and when I say supremacy clause, I am referring to Article VI, clause 2. This principle was laid down early in our law by the Supreme Court of the United States in that now much referred to and well-known *Tarble's Case, 13 Wall. 397, 80 U.S. 397, 20 L.Ed. 597.* However, that is the general rule, and a different problem exists where the res, that is, the thing, is in the possession of the state court. The Supreme Court of the United States, in *Covell v. Heyman, 111 U.S. 176, 4 S.Ct. 355, 358, 28 L.Ed. 390,* made this clear when it stated:

'But between state courts and those of the [**14] United States, it is something more. It is a principle of right and of law, and therefore of necessity. It leaves nothing to discretion or mere convenience. * * * They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void.'

To the same effect is the Ninth Circuit case of *Strand v. Schmittroth, 251 F.2d 590.* This Court notes at this time that the Heyman principle does not apply when the state court has acted in seizing the res in bad faith. It should be made clear, therefore, that if Judge Wallace impounded these records for the sole purpose of thwarting this investigation, he

cannot take refuge in the Heyman principle of comity. In this case, it is not necessary for the good faith of Judge Wallace, insofar as his impounding these records is concerned, to be inquired into, since this Court considers it appropriate to modify the subpoena of the Commission (which modification has already [**15] been done by agreed order and that phase of the agreed order still stands) and to modify the order of this Court dated December 11, 1958 and amended December 17, 1958. This modification will eliminate any proposed seizure and removal of these voting records and will eliminate any possible interference in their bona fide use by the State authorities. This power to make such modification, if this Court considers it appropriate, even in the absence of agreement, is clear. The Court cites *N.L.R.B. v. Duval Jewelry Company, 5 Cir., 1958, 257 F.2d 672*, and reference is made to cases cited by the Fifth Circuit Court of Appeals in that case. This modification will relieve movants, particularly George C. Wallace, of any obligation to produce the records in Montgomery, and will eliminate the necessity for the records to be moved from their present location. Instead, each of the registrars, specifically, W. A. Stokes, Sr., M. T. Evans, and J. W. Spencer, and George C. Wallace, as Judge and in whatever other capacity he [*70] is acting in, will be ordered to make said records available at their present location, which this Court understands is at the Court House in Barbour County and [**16] if that is not the case then wherever their location is, for copying, inspection, and photographing by the Commission or its duly authorized agents. Thus the movants' objection to the removal of the records from their present location, and their voluminous aspect, is eliminated from this case.

Now, it is obvious from what has been stated by this Court already in this order that there is no valid basis for the movant-registrars' objections to appearing and testifying if this Court by later order decides, upon a proper application, if such application is made, that they must do so. Any objections that they now make will, therefore, be and they are hereby overruled and denied. The question as to the time and place the registrars W. A. Stokes, Sr., M. T. Evans, and J. W. Spencer will be ordered to appear and testify will be reserved for further order, pending the examination of these records in Barbour and Bullock Counties by the Commission or its duly authorized agents.

The contention that the registrars are judicial officers has no merit in this action. This Court cites *Malone v. Jones, 219 Ala. 236, 122 So. 26; Boswell v. Bethea, 242 Ala. 292, 5 So.2d 816;* and *Hawkins v. Vines,* [**17] *249 Ala. 165, 30 So.2d 451*. In the Bethea case, particularly, the Supreme Court of Alabama set forth the proposition that the functions of the registrars are identical with the functions of an administrative agency making quasi-judicial determinations.

In any event, regardless of their status under Alabama law, registrars cannot be given any immunity from the exercise of a federal function such as that involved in this case. To hold otherwise would be to say that the State of Alabama could thwart the Congress of the United States in any field and deprive the Federal Government of its specifically delegated powers, here those delegated specifically by the Fifteenth Amendment to the Constitution, simply by saying that the state officers, such as the registrars, were judicial officers or judges. That cannot be and it is not the law as this Court understands it. This Court now orders and directs that George C. Wallace, as the present custodian of the said records, that is, the voting and registration records of Barbour and Bullock Counties, Alabama, is hereby ordered and directed to make available to the Commission on Civil Rights or its authorized representatives or agents between [**18] the hours of 10:00 a.m. and 4:00 p.m., on January 12 and 13, 1959, at some convenient place to all concerned, in the Court

House at Barbour and/or Bullock Counties, Alabama, the records of the Boards of Registrars of Barbour and Bullock Counties, Alabama, pertaining to the registration of all persons heretofore registered as voters, including applications, questionnaires, and other evidence touching upon the qualifications of such persons registered and not registered by the Boards of Registrars of Barbour and Bullock Counties, Alabama. As to Grady Rogers and E. P. Livingston, it appears that these individuals, acting individually and through their counsel, have in good faith carried out their agreement and complied with the order of this Court dated January 5, 1959, and this matter is, therefore, as to them, ordered to be and it is hereby dismissed. Jurisdiction of this cause is retained for the purpose of any further orders that it may be necessary and appropriate to enter. The representatives of the Commission on Civil Rights, the representatives of the Attorney General of the United States, and the counsel for Wallace, Stokes, Evans, and Spencer are directed to appear before [**19] this Court at 9:30 a.m., on January 14, 1959, for the purpose of reporting to this Court the progress of the matter, and also for the purpose of presenting any further motions that may be appropriate of required.

## B. Hannah et al. v. Larche et al. 363 U.S. 420 (1960)

LEXSEE 363 U.S. 420

**HANNAH ET AL. v. LARCHE ET AL.**

**No. 549**

**SUPREME COURT OF THE UNITED STATES**

***363 U.S. 420; 80 S. Ct. 1502; 4 L. Ed. 2d 1307; 1960 U.S. LEXIS 1862***

**Argued January 18-19, 1960**
**June 20, 1960 ***

*** Together with No. 550, *Hannah et al.* v. *Slawson et al.*, on petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.**

**PRIOR HISTORY:**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

**LexisNexis (TM) HEADNOTES - Core Concepts:**

**SYLLABUS:**

The Civil Rights Act of 1957 created in the Executive Branch of the Government a Commission on Civil Rights to investigate written, sworn allegations that persons have been discriminatorily deprived of their right to vote on account of their color, race, religion or national origin, to study and collect information "concerning legal developments constituting a denial of equal protection of the laws," and to report to the President and Congress. The Commission is authorized to subpoena witnesses and documents and to conduct hearings. The Act prescribes certain rules of procedure; but nothing in the Act requires the Commission to afford persons accused of discrimination the right to be apprised as to the specific charges against them or as to the identity of their accusers, or the right to confront and cross-examine witnesses appearing at Commission hearings; and the Commission prescribed supplementary rules of procedure which deny such rights in hearings conducted by it. *Held:*

1. In the light of the legislative history of the Act, the Commission was authorized by Congress to adopt such rules of procedure. Pp. 430-439.

2. Since the Commission makes no adjudications but acts solely as an investigative and fact-finding agency, these rules of procedure do not violate the Due Process Clause of the Fifth Amendment. *Morgan v. United States, 304 U.S. 1; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123; Greene v. McElroy, 360 U.S. 474,* distinguished. Pp. 440-452.

3. Such rules of procedure do not violate the Sixth Amendment, since that Amendment is specifically limited to "criminal prosecutions," and the proceedings of the Commission do not fall in that category. P. 440, n. 16.

4. The Civil Rights Act of 1957 is appropriate legislation under the Fifteenth Amendment. P. 452.

5. Section 7 of the Administrative Pocedure Act is not applicable to hearings conducted by this Commission. Pp. 452-453.

*177 F. Supp. 816,* reversed.

**COUNSEL:**

*Deputy Attorney General Walsh* argued the causes for appellants in No. 549 and petitioners in No. 550. On the brief were *Solicitor General Rankin, Acting Assistant Attorney General Ryan, Philip Elman, Harold H. Greene* and *David Rubin*.

*Jack P. F. Germillion,* Attorney General of Louisiana, argued the cause for appellees in No. 549. With him on the brief were *George M. Ponder,* First Assistant Attorney General, and *Albin P. Lassiter*.

*W. M. Shaw* argued the cause and filed a brief for respondents in No. 550.

**JUDGES:**

Warren, Black, Frankfurter, Douglas, Clark, Harlan, Brennan, Whittaker, Stewart

**OPINIONBY:**

WARREN

**OPINION:**

[*421] [***1310] [**1504] MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases involve the validity of certain Rules of Procedure adopted by the Commission on Civil Rights, which was established by Congress in 1957. n1 Civil Rights Act of 1957, 71 Stat. 634, *42 U.S.C. § § 1975*-1975e. They arise out of the Commission's investigation of alleged Negro voting deprivations in the State of Louisiana. The appellees in No. 549 are registrars of voters in the State of Louisiana, and the respondents in No. 550 are private citizens of Louisiana. n2 After having been summoned to [*422] appear before a hearing which the Commission proposed to conduct in Shreveport, Louisiana, these registrars and private citizens requested the United States District Court for the Western District of Louisiana to enjoin the Commission from holding its anticipated hearing. It was alleged, among other things, that the Commission's Rules of Procedure governing the conduct of its investigations were unconstitutional. The specific rules challenged are those which provide that the identity of persons submitting complaints to the Commission need not be disclosed, and that those summoned to testify before the Commission, including persons against whom complaints have been filed, may not cross-examine other witnesses called by the Commission. The District Court held that the Commission was not authorized to adopt the Rules of Procedure here in question, and therefore issued an injunction which prohibits the Commission from holding any hearings in the Western District of Louisiana as long as the challenged procedures remain in force. The Commission requested this Court to review the District Court's decision. n3 We granted [**1505] the Commission's [***1311] motion to advance the cases, and oral argument was accordingly scheduled on the jurisdiction on appeal in No. 549, on the petition for certiorari in No. 550, and on the merits of both cases.

n1 Although the Civil Rights Act of 1957 provided that the Commission should cease to exist within two years after its creation, 71 Stat. 635, *42 U.S.C. § 1975c*, in 1959 Congress extended the Commission's life for an additional two years. 73 Stat. 724.

n2 The appellants in No. 549 and the petitioners in No. 550 are the individual members of the Civil Rights Commission. Hereinafter, they will be referred to as "the Commission." The appellees in No. 549 and the respondents in No. 550 will both hereinafter be referred to as "respondents."

n3 Because No. 549 was heard and decided by a three-judge District Court, a direct appeal to this Court was sought by the Commission pursuant to *28 U.S.C. § 1253*. The Commission also filed an appeal in No. 550 with the United States Court of Appeals for the Fifth Circuit. However, before the Court of Appeals could render a decision in No. 550, the Commission filed a petition for certiorari pursuant to Rule 20 of this Court.

Having heard oral argument as scheduled, we now take jurisdiction in No. 549 and grant certiorari in No. 550. [*423] The specific questions which we must decide are (1) whether the Commission was authorized by Congress to adopt the Rules of Procedure challenged by the respondents, and (2) if so, whether those procedures violate the Due Process Clause of the Fifth Amendment.

A description of the events leading up to this litigation is necessary not only to place the legal questions in their proper factual context, but also to indicate the significance of the Commission's proposed Shreveport hearing. During the months prior to its decision to convene the hearing, the Commission had

received some sixty-seven complaints from individual Negroes who alleged that they had been discriminatorily deprived of their right to vote. Based upon these complaints, and pursuant to its statutory mandate to "investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin," n4 the Commission began its investigation into the Louisiana voting situation by making several *ex parte* attempts to acquire information. Thus, in March 1959, a member of the Commission's staff interviewed the Voting Registrars of Claiborne, Caddo, and Webster Parishes, but obtained little relevant information. During one of these interviews the staff member is alleged to have informed Mrs. Lannie Linton, the Registrar of Claiborne Parish, that the Commission had on file four sworn statements charging her with depriving Negroes of their voting rights solely because of their race. Subsequent to this interview, Mr. W. M. Shaw, Mrs. Linton's personal attorney, wrote a letter to Mr. Gordon M. Tiffany, the Staff Director of the Commission, in which it was asserted that Mrs. Linton knew the sworn complaints lodged against [*424] her to be false. The letter also indicated that Mrs. Linton wished to prefer perjury charges against the affiants, and Mr. Shaw therefore demanded that the Commission forward to him copies of the affidavits so that a proper presentment could be made to the grand jury. On April 14, 1959, Mr. Tiffany replied to Mr. Shaw's letter and indicated that the Commission had denied the request for copies of the sworn affidavits. Mr. Shaw was also informed of the following official statement adopted by the Commission:

"The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

[***1312] A copy of Mr. Tiffany's letter was sent to Mr. Jack P. F. Gremillion, the Attorney General of Louisiana, who had previously informed the Commission that under Louisiana law the Attorney General is the legal adviser for all voting registrars in any hearing or investigation before a federal commission.

n4 Section 104 of the Civil Rights Act of 1957, 71 Stat. 635, *42 U.S.C. § 1975c* (a) (1).

Another attempt to obtain information occurred on May 13, 1959, when Mr. [**1506] Tiffany, upon Commission authorization, sent a list of 315 written interrogatories to Mr. Gremillion. These interrogatories requested very detailed and specific information, and were to be answered by the voting registrars of nineteen Louisiana parishes. Although Mr. Gremillion and the Governor of Louisiana had previously assented to the idea of written interrogatories, on May 28, 1959, Mr. Gremillion sent a letter to [*425] Mr. Tiffany indicating that the voting registrars refused to answer the interrogatories. The reasons given for the refusal were that many of the questions seemed unrelated to the functions of voting registrars, that the questions were neither accompanied by specific complaints nor related to specific complaints, and that the time and research required to answer the questions placed an unreasonable burden upon the voting registrars.

In response to this refusal, on May 29, 1959, Mr. Tiffany sent a telegram to Mr. Gremillion, informing the latter that the interrogatories were based upon specific allegations received by the Commission, and

reaffirming the Commission's position that the identity of specific complainants would not be disclosed. Mr. Tiffany's letter contained a further request that the interrogatories be answered and sent to the Commission by June 5, 1959. On June 2, 1959, Mr. Gremillion wrote a letter to Mr. Tiffany reiterating the registrars' refusal, and again requesting that the names of complainants be disclosed.

Finally, as a result of this exchange of correspondence, and because the Commission's attempts to obtain information *ex parte* had been frustrated, the Commission, acting pursuant to Section 105 (f) of the Civil Rights Act of 1957, n5 decided to hold the Shreveport hearing commencing on July 13, 1959.

n5 Section 105 (f) of the Civil Rights Act authorizes the Commission to hold hearings and to subpoena witnesses. That section provides:

"(f) *Hearings; issuance of subpenas.*

"The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a (j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman." 71 Stat. 636, *42 U.S.C. § 1975d* (f).

[*426] Notice of the scheduled hearing was sent to Mr. Gremillion, and between June 29 and July 6, subpoenas *duces tecum* were served on the respondents in No. 549, ordering them to appear at the hearing and to bring with them various voting and registration records within their custody and control. Subpoenas were also served upon the respondents in No. 550. These private citizens were apparently summoned to explain their activities with regard to alleged deprivations of Negro voting rights. n6

n6 The role of private citizens in depriving Negroes of their right to vote was one of the questions involved in *United States v. McElveen, 180 F. Supp. 10* (E.D. La.), aff'd as to defendant *Thomas, 362 U.S. 58.*

On [***1313] July 8, 1959, Mr. Tiffany wrote to Mr. Gremillion, enclosing copies of the Civil Rights Act and of the Commission's Rules of Procedure. n7 Mr. Gremillion's attention was also drawn to Section 102 (h) of the Civil Rights Act, which permits witnesses to submit, subject to the [**1507] discretion of the Commission, brief and pertinent sworn statements for inclusion in the record. n8

n7 Rule 3 (i) of the Commission's Rules of Procedure, adopted on July 1, 1958, prohibits witnesses or their counsel from cross-examining other witnesses. That Rule reads: "Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

n8 The full text of Section 102 (h) of the Civil Rights Act reads as follows:

"(h) *Submission of written statements.*

"In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings." 71 Stat. 634, *42 U.S.C. § 1975a* (h).

Two days later, on July 10, 1959, the respondents in No. 549 andNo. 550 filed two separate complaints in the District [*427] Court for the Western District of Louisiana. Both complaints alleged that the respondents would suffer irreparable harm by virtue of the Commission's refusal to furnish the names of persons who had filed allegations of voting deprivations, as well as the contents of the allegations, and by its further refusal to permit the respondents to confront and cross-examine the persons making such allegations. In addition, both complaints alleged that the Commission's refusals not only violated numerous provisions of the Federal Constitution, but also constituted "ultra vires" acts not authorized either by Congress or the Chief Executive. The respondents in No. 549 also alleged that they could not comply with the subpoenas duces tecum because Louisiana law prohibited voting registrars from removing their voting records except "upon an order of a competent court," and because the Commission was not such a "court." Finally, the complaint in No. 549 alleged that the Civil Rights Act was unconstitutional because it did not constitute "appropriate legislation within the meaning of Section (2) of the XV Amendment."

Both complaints sought a temporary restraining order and a permanent injunction prohibiting the members of the Commission (a) from compelling the "testimony from or the production of any records" by the respondents until copies of the sworn charges, together with the names and addresses of the persons filing such charges were given to the respondents; n9 (b) from "conducting any hearing pursuant to the rules and regulations adopted by" the Commission; and (c) from "conspiring together . . . or with any other person . . . to deny complainants their rights and privileges as citizens" of Louisiana or the [*428] United States "or to deny to complainants their right to be confronted by their accusers, to know the nature and character of the charges made against them," and to be represented by counsel. The complaint in No. 549 also sought a [***1314] declaratory judgment that the Civil Rights Act of 1957 was unconstitutional.

n9 Under the Civil Rights Act, the Commission not only has the power to issue subpoenas under Section 105 (f), but, as is customary when Congress confers the subpoena power on an investigative agency, the Commission is also authorized to enforce its subpoenas by enlisting the aid of the federal courts. 71 Stat. 636, *42 U.S.C. § 1975d* (g).

On the day that the complaints were filed, the district judge held a combined hearing on the prayers for temporary restraining orders. On July 12, 1959, he found that the respondents would suffer irreparable harm if the hearings were held as scheduled, and he therefore issued the requested temporary restraining orders and rules to show cause why a preliminary injunction should not be granted. *Larche v. Hannah, 176 F. Supp. 791*. The order prohibited the Commission from holding any hearings which concerned the respondents or others similarly situated until a determination was made on the motion for a preliminary injunction.

Inasmuch as the complaint in No. 549 attacked the constitutionality of the Civil Rights Act, a three-judge court was convened pursuant to *28 U.S.C. § 2282*. Since the complaint in No. 550 did not challenge the

constitutionality of the Civil Rights Act of 1957, [**1508] that case was scheduled to be heard by a single district judge. That district judge was also a member of the three-judge panel in No. 549, and a combined hearing was therefore held on both cases on August 7, 1959.

On October 7, 1959, a divided three-judge District Court filed an opinion in No. 549. *Larche v. Hannah , 177 F. Supp. 816.* The court held that the Civil Rights Act of 1957 was constitutional since it "very definitely constitutes appropriate legislation" authorized by the Fourteenth and Fifteenth Amendments and Article I, Section 2, of the Federal Constitution. *Id., at 821.* The court then held that since the respondents' allegations with regard to apprisal, confrontation, and cross-examination [*429] raised a "serious constitutional issue," this Court's decision in *Greene v. McElroy, 360 U.S. 474,* required a preliminary determination as to whether Congress specifically authorized the Commission "to adopt rules for investigations ... which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them." *177 F. Supp., at 822.* The court found that Congress had not so authorized the Commission, and an injunction was therefore issued. In deciding the case on the issue of authorization, the court never reached the "serious constitutional issue" raised by the respondents' allegations. n10 The injunction prohibits the Commission from holding any hearing in the Western District of Louisiana wherein the registrars, "accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation, and cross examination." n11 The single district [*430] judge rendered a decision in No. 550 incorporating by reference the opinion of the three-judge District Court, and an injunction, identical in substance to that entered in No. 549, was issued.

n10 Judge Wisdom, who dissented, was of the opinion that the procedures adopted by the Commission were authorized by Congress, and that those procedures were also constitutional. *177 F. Supp., at 828.*

n11 The court's injunction reads as follows:

"For reasons assigned in the Court's written opinion of October 6, 1959,

"It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiff registrars, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

"This injunction does not prohibit all hearings pursuant to Public Law 85-315, 85th Congress, *42 U.S.C.A. 1975,* et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

"Thus done and signed in Chambers on this the 9 day of November, 1959."

The breadth of this injunction is indicated by the fact that the Commission is not only prohibited from compelling respondents' appearance at the hearing, but it is also enjoined from conducting *any* hearing in the Western District of Louisiana under existing rules of procedure, whether or not the respondents are called as witnesses.

I.

[***1315]

[***HR1] We held last Term in *Greene v. McElroy, supra,* that when action taken by an inferior governmental agency was accomplished by procedures which raise serious constitutional questions, an initial inquiry will be made to determine whether or not "the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use." *Id., at 507.* The considerations which prompted us in *Greene* to analyze the question of authorization before reaching the constitutional issues presented [**1509] are no less pertinent in this case. Obviously, if the Civil Rights Commission was not authorized to adopt the procedures complained of by the respondents, the case could be disposed of without a premature determination of serious constitutional questions. See *Vitarelli v. Seaton, 359 U.S. 535; Kent v. Dulles, 357 U.S. 116; Watkins v. United States, 354 U.S. 178; Peters v. Hobby, 349 U.S. 331.*

We therefore consider first the question of authorization. As indicated above, the Commission specifically refused to disclose to the respondents the identity of persons who had submitted sworn complaints to the Commission and the specific charges contained in those complaints. Moreover, the respondents were informed by the Commission that they would not be permitted to cross-examine [*431] any witnesses at the hearing. The respondents contend, and the court below held, that Congress did not authorize the adoption of procedural rules which would deprive those being investigated by the Commission of the rights to apprisal, confrontation, and cross-examination. The court's holding is best summarized by the following language from its opinion:

"[We] find nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the Act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination." *177 F. Supp., at 822.*

[***HR2] After thoroughly analyzing the Rules of Procedure contained in the Civil Rights Act of 1957 and the legislative history which led to the adoption of that Act, we are of the opinion that the court below erred in its conclusion and that Congress did authorize the Commission to adopt the procedures here in question.

It could not be said that Congress [***1316] ignored the procedures which the Commission was to follow in conducting its hearings. Section 102 of the Civil Rights Act of 1957 lists a number of procedural rights intended to safeguard witnesses from potential abuses. Briefly summarized, the relevant subdivisions of Section 102 provide that the Chairman shall make an opening statement as to the subject of the hearing; that a copy of the Commission's rules shall be made available to witnesses; that witnesses "may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights"; that potentially defamatory, degrading, or incriminating testimony shall be received in executive session, and [*432] that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to request the Commission to subpoena additional witnesses; that testimony taken in executive session shall be released only upon the consent of the Commission; and that witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. n12

----------Footnotes----------

n12 The complete text of Section 102 reads as follows:

" § 1975a. *Rules of procedure.*

"(a) *Opening statement.*

"The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

"(b) *Copy of rules.*

"A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) *Attendance of counsel.*

"Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) *Censure and exclusion of counsel.*

"The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) *Defamatory, degrading or incriminating evidence.*

"If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

"(f) *Requests for additional witnesses.*

"Except as provided in this section and section 1975d (f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) *Release of evidence taken in executive session.*

"No evidence or testimony taken in executive sesion may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $ 1,000, or imprisoned for not more than one year.

"(h) *Submission of written statements.*

"In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) *Transcripts.*

"Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) *Witness fees.*

"A witness attending any session of the Commission shall receive $ 4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled

to an additional allowance of $ 12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) *Restriction on issuance of subpena.*

"The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business." 71 Stat. 634, *42 U.S.C. § 1975a.*

In addition to the procedural safeguards provided by Section 102 of the Act, the Commission's Rules of Procedure grant additional protection. Thus, Rule 3 (f) of the Commission's Rules of Procedure provides:

"(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2 (i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof."

And Rule 3 (j) provides:

"(j) If the Commission pursuant to Rule 2 (e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf."

[*433]

[***HR3] The [***1317] absence of any reference to apprisal, confrontation, and cross-examination, [**1510] in addition to the fact that counsel's role is specifically limited to advising witnesses of their constitutional rights, creates a presumption that Congress did not intend witnesses appearing before the Commission to have the rights claimed by respondents. This initial presumption is strengthened beyond any [*434] reasonable doubt by an investigation of the legislative history of the Act.

[**1511] The complete story of the 1957 Act begins with the 1956 House Civil Rights Bill, H.R. 627. That bill was reported out of the House Judiciary Committee without any reference to the procedures to be used by the Commission in conducting its hearings. H.R. Rep. No. 2187, 84th Cong., 2d Sess. During the floor debate, Representative Dies of Texas introduced extensive amendments designed to regulate the procedure of Commission hearings. 102 Cong. Rec. 13542. Those amendments would have guaranteed to witnesses appearing before the Commission all of the rights claimed by the respondents in these cases. The amendments provided, in pertinent part, that a person who might be adversely affected by the testimony of another "shall be fully advised by the [*435] Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented"; that a person adversely affected by evidence or testimony given at a public hearing

could "appear and testify or file a sworn statement in his own behalf"; that such a person could also "have the adverse witness recalled" within a stated time; and that he or his counsel could cross-examine adverse witnesses. n13

n13 The amendments introduced by Representative Dies read, in pertinent part, as follows:

"'(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

"'(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

"'(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v) subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

"'Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

"'(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated such person shall have, prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

"'(u) Any witness (except a member of the press who testifies in his professional capacity) who gives

testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.'" 102 Cong. Rec. 13542-13543.

[*436] The [***1318] [**1512] bill, as finally passed by the House, contained all of the amendments proposed by Representative Dies. 102 Cong. Rec. 13998-13999. However, before further action could be taken, the bill died in the Senate. Although many proposals relating to civil rights were introduced in the 1957 Session of Congress, two bills became the prominent contenders for support. One was S. 83, a bill introduced by Senator Dirksen containing the same procedural provisions that the amended House bill in 1956 had contained. The other bill, H.R. 6127, was introduced by Representative Celler, Chairman of the House Judiciary Committee, and this bill incorporated the so-called House "fair play" rules as the procedures which should govern the conduct of Commission hearings. n14 After extensive debate and hearings, H.R. 6127 [*437] was finally passed by both Houses of Congress, and the House "fair play" rules, which make no provision for advance notice, confrontation, or cross-examination, were adopted in preference to the more protective rules suggested in S. 83. n15

n14 The complete text of the House "fair play" rules may be found in H. Res. 151, 84th Cong., 1st Sess.

n15 That Congress focused upon the issues here involved and recognized the distinctions between H.R. 6127 and S. 83 is attested to by the following extracts from the floor debate and committee hearings:

In testifying before both the House and Senate Subcommittees considering the various proposed civil rights bills, Attorney General Brownell supported the adoption of the House "fair play" rules instead of the more restrictive procedures outlined in S. 83. Thus, at the Senate hearings, the Attorney General made the following statement:

"Now there is one other addition to S. 83 that I would like to make special reference to and that is the provision for rules of procedure contained in section 102 on pages 2 to 10 of S. 83.

"These rules of procedure are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable. We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission.

. . . . .

"Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules which may have to be tested out under the courts and this is only a 2-year Commission and you might have to spend those 2 years studying the rules instead of getting at the facts." Hearings before Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 85th Cong., 1st Sess. 14-15.

See also Hearings before Subcommittee No. 5 of the House Judiciary Committee, 85th Cong., 1st Sess. 593.

The lack of any right to cross-examine witnesses was commented upon by members of both the House and the Senate:

Statement of Senator Talmadge during the Senate floor debate, 103 Cong. Rec. 11504:

"No provision is made for notification of persons against whom charges are to be made.

"No provision is made for persons adversely affected by testimony taken by the Commission to be present when they are accused or later to confront and cross-examine their accusers."

Statement of Senator Stennis during Senate floor debate, 103 Cong. Rec. 13835:

"Defamatory testimony tending to defame, degrade, or icriminate any person cannot be heard by the person slandered, since the testimony must be taken in executive session. There is no requirement in the proposed statute that the person injured by defamatory testimony shall have an opportunity to examine the nature of the adverse testimony. He has no right of confrontation nor cross-examination, and his request to subpena witnesses on his behalf falls within the arbitrary discretion of the Commission. There is no right to subpena witnesses."

Statement of Representative Kilday during House floor debate, 103 Cong. Rec. 8673:

"The bill provides that witnesses may be accompanied by counsel, for what purpose? 'For the purpose of advising them concerning their constitutional rights.' That is all. Even though the Commission or its own counsel develops only a portion of a transaction, and that adverse to the witness, his lawyer cannot ask a single question to develop the remainder of the transaction or the portion favorable to him."

Statement of Representative Frazier during Hearings before the House Rules Committee, 85th Cong., 1st Sess. 176:

"The authors of this proposal contemplate that it will yield thousands of complaints and even more thousands of subpenas will be issued. The various allegations will, in the first instance, be incontrovertible and wholly ex parte and the principal concerned, against whom the charges are made, when summoned as a witness is given no opportunity to cross-examine. True, the person summoned as a witness may have counsel (sec. 102), but only for the purpose of advising him of his constitutional rights."

That the bill contained the House "fair play" rules is demonstrated by the following statement of Representative Celler, the author of the bill:

*"The rules of procedure of the Commission are the same as those which govern the committees of the House.* For example, the chairman is required to make an opening statement as to the subject of the hearing. Witnesses are furnished with a copy of the Commission's rules and may be accompanied by counsel. The chairman is authorized to punish breaches of order by censure and exclusion. Protection is furnished to witnesses when it appears that a person may be the subject of derogatory information by requiring such evidence to be received in executive session, and affording the person affected the right to appear and testify, and further to submit a request for subpena of

additional witnesses." 103 Cong. Rec. 8491. (Emphasis supplied.)

[*438] The [***1319] [**1513] legislative background of the Civil Rights Act not only provides evidence of congressional authorization, but it also distinguishes these cases from *Greene v. McElroy, supra,* upon which the court below relied so heavily. In *Greene* there was no express authorization by Congress or the President for the Department of Defense to adopt the type of security clearance program there involved. Nor was there any legislative history or executive directive indicating that the Secretary of Defense was authorized to establish [***1320] a security clearance program which could deprive a person of his government employment on the basis of secret and undisclosed information. Therefore, we concluded in *Greene* that because of the serious constitutional problems presented, mere acquiescence by the President or the Congress would not be sufficient to constitute authorization [*439] for the security clearance procedures adopted by the Secretary of Defense. The facts of this case present a sharp contrast to those before the Court in *Greene.* Here, we have substantially more than the mere acquiescence upon which the Government relied in *Greene.* There was a conscious, intentional selection by Congress of one bill, providing for none of the procedures demanded by respondents, over another bill, which provided for all of those procedures. We have no doubt that Congress' consideration and rejection of the procedures here at issue constituted an authorization to the Commission to conduct its hearings according to the Rules of Procedure it has adopted, and to deny to witnesses the rights of apprisal, confrontation, and cross-examination.

[*440] II.

The existence of authorization inevitably requires us to determine whether the Commission's Rules of Procedure are consistent with the Due Process Clause of the Fifth Amendment. n16

[***HR4]

n16 Although the respondents contend that the procedures adopted by the Commission also violate their rights under the Sixth Amendment, their claim does not merit extensive discussion. That Amendment is specifically limited to "criminal prosecutions," and the proceedings of the Commission clearly do not fall within that category. See *United States v. Zucker, 161 U.S. 475, 481.*

[***HR5] Since the requirements of due process frequently vary with the type of proceeding involved, *e.g.,* compare *Opp Cotton Mills, Inc. v. Administrator, 312 U.S. 126, 152,* with *Interstate Commerce Comm'n v. Louisville & N.R. Co., 227 U.S. 88, 91,* [**1514] we think it is necessary at the outset to ascertain both the nature and function of this Commission. Section 104 of the Civil Rights Act of 1957 specifies the duties to be performed by the Commission. Those duties consist of (1) investigating written, sworn allegations that anyone has been discriminatorily deprived of his right to vote; (2) studying and collecting information "concerning legal developments constituting a denial of equal protection of the laws under the Constitution"; and (3) reporting to the President and Congress on its activities, findings, and recommendations. n17 As is apparent [*441] from this brief sketch of the statutory duties imposed upon the Commission, its [***1321] function is purely investigative and fact-finding. It does not adjudicate.It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone

of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

n17 The full text of Section 104 of the Act reads as follows:

" § 1975c. *Duties; reports; termination.*

"(a) The Commission shall --

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957.

"(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist." 71 Stat. 635, *42 U.S.C. § 1975c.*

[***HR6] The specific constitutional question, therefore, is whether persons whose conduct is under investigation by a governmental agency of this nature are entitled, by virtue of the Due Process Clause, to know the specific charges that are being investigated, as well as the identity of the complainants, n18 and to have the right to cross-examine [*442] those complainants and other witnesses. Although these procedures are very desirable in some situations, for the reasons which we shall now indicate, we are of the opinion that they are not constitutionally required in the proceedings of this Commission.

n18 It should be noted that the respondents in these cases did have notice of the general nature of the inquiry. The only information withheld from them was the identity of specific complainants and the exact charges made by those complainants. Because most of the charges related to the denial of individual voting rights, it is apparent that the Commission could not have disclosed the exact charges without also revealing the names of the complainants.

"

[***HR7] [***HR8] [***HR9] [***HR10] Due process" is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental [**1515] action does not partake of an adjudication, as for example, when a general fact-finding

investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

[***HR11] It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate, it need not be bound [***1322] by adjudicatory procedures. Yet, the respondents contend, and the court below implied, that such procedures [*443] are required since the Commission's proceedings might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions. That any of these consequences will result is purely conjectural. There is nothing in the record to indicate that such will be the case or that past Commission hearings have had any harmful effects upon witnesses appearing before the Commission. However, even if such collateral consequences were to flow from the Commission's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function. n19

----------Footnotes----------

n19 Cf. *Sinclair v. United States, 279 U.S. 263, 295,* holding that Congress' legitimate right to investigate is not affected by the fact that information disclosed at the investigation may also be used in a subsequent criminal prosecution. Cf. also *McGrain v. Daugherty, 273 U.S. 135, 179-180,* holding that a regular congressional investigation is not rendered invalid merely because "it might possibly disclose crime or wrongdoing" on the part of witnesses summoned to appear at the investigation. *Id., at 180.*

On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and i persons who might be indirectly affected by an investigation were given an absolute right to cross-examine every witness called to testify. Fact-finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand the right to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of [*444] his own selection. n20 This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts.

----------Footnotes----------

n20 The injunction issued by the court below would certainly lead to this result since it prohibits the Commission

from conducting *any* hearing under existing procedure, even though those being investigated are not summoned to testify.

In addition to these persuasive considerations, we think it is highly significant that the Commission's procedures are not historically foreign to other forms of investigation under our system. Far from being unique, the Rules of Procedure adopted by the Commission are similar to those which, as shown by the [**1516] Appendix to this opinion, n21 have traditionally governed the proceedings of the vast majority of governmental investigating agencies.

n21 A compilation of the rules of procedure governing the investigative proceedings of a representative group of administrative and executive agencies, presidential commissions, and congressional committees is set out in the Appendix to this opinion, *post*, p. 454.

A frequently used type of investigative agency is the legislative committee. The investigative function of such committees is as old as the Republic. n22 The volumes written [***1323] about legislative investigations have proliferated almost as rapidly as the legislative committees themselves, and the courts have on more than one occasion been confronted with the legal problems presented by such committees. n23 The procedures adopted by legislative investigating [*445] committees have varied over the course of years. Yet, the history of these committees clearly demonstrates that only infrequently have witnesses appearing before congressional committees been afforded the procedural rights normally associated with an adjudicative proceeding. In the vast majority of instances, congressional committees have not given witnesses detailed notice or an opportunity to confront, cross-examine and call other witnesses. n24

n22 The first full-fledged congressional investigating committee was established in 1792 to "inquire into the causes of the failure of the late expedition under Major General St. Clair." 3 Annals of Cong. 493 (1792). The development and use of legislative investigation by the colonial governments is discussed in Eberling, Congressional Investigations, 13-30. The English origin of legislative investigation in this country is discussed in Dimock, Congressional Investigating Committees, 46-56.

n23 See, *e.g., Kilbourn v. Thompson, 103 U.S. 168; McGrain v. Daugherty, 273 U.S. 135; Sinclair v. United States, 279 U.S. 263; Christoffel v. United States, 338 U.S. 84; United States v. Bryan, 339 U.S. 323; United States v. Fleischman, 339 U.S. 349; Watkins v. United States, 354 U.S. 178; Barenblatt v. United States, 360 U.S. 109.*

n24 See Appendix, *post*, pp. 478-485. See also Dimock, Congressional Investigating Committees, 153; Eberling, Congressional Investigations, 283, 390; McGeary, The Developments of Congressional Investigative Power, 80; Liacos, Rights of Witnesses Before Congressional Committees, *33 B.U.L. Rev. 337, 359-361;* American Bar Association, Special Committee on Individual Rights as Affected by National Security, Appendix to Report on Congressional Investigations, 67-68.

The English practice is described in Clokie and Robinson, Royal Commissions of Inquiry; Finer, Congressional Investigations: The British System, 18 U. of Chi. L. Rev. 521; Keeton, Parliamentary Tribunals of Inquiry, in Vol. 12, Current Legal Problems 1959, 12.

[***HR12] The history of investigations conducted by the executive branch of the Government is also marked by a decided absence of those procedures here in issue. n25 The best example is provided by the administrative regulatory agencies. Although these agencies normally make determinations of a quasi-judicial nature, they also frequently conduct purely fact-finding investigations. When doing the former, they are governed by the Administrative Procedure Act, 60 Stat. 237, *5 U.S.C. § § 1001*-1011, and the parties to the adjudication are accorded the traditional safeguards of a trial. However, when [*446] these agencies are conducting nonadjudicative, fact-finding investigations, rights such as apprisal, confrontation, [**1517] and cross-examination generally do not obtain.

n25 See Appendix, *post*, pp. 454-471. See also Gellhorn, Federal Administrative Proceedings, 108; Report of the Attorney General's Committee on Administrative Procedure and the various Monographs written by that Committee.

A typical agency is the Federal Trade Commission. Its rules draw a clear distinction between adjudicative proceedings and investigative proceedings. 16 CFR, 1958 Supp., § 1.34. Although the latter are frequently initiated by complaints from undisclosed informants, *id.*, § § 1.11, 1.15, and although the Commission may use the information obtained during investigations to initiate adjudicative proceedings, *id.*, § 1.42, nevertheless, persons summoned to appear before investigative proceedings are entitled only to a general notice of "the purpose and scope of the investigation," *id.*, § 1.33, and while they may have the advice of counsel, "counsel may not, as a matter of right, otherwise participate in the investigation." *Id.*, § 1.40. The [***1324] reason for these rules is obvious. The Federal Trade Commission could not conduct an efficient investigation if persons being investigated were permitted to convert the investigation into a trial. We have found no authorities suggesting that the rules governing Federal Trade Commission investigations violate the Constitution, and this is understandable since any person investigated by the Federal Trade Commission will be accorded all the traditional judicial safeguards at a subsequent adjudicative proceeding, just as any person investigated by the Civil Rights Commission will have all of these safeguards, should some type of adjudicative proceeding subsequently be instituted.

Another regulatory agency which distinguishes between adjudicative and investigative proceedings is the Securities and Exchange Commission. This Commission conducts numerous investigations, many of which are initiated by complaints from private parties. *17 CFR § 202.4*. Although the Commission's Rules provide that parties to adjudicative proceedings shall be given detailed [*447] notice of the matters to be determined, *id.*, 1959 Supp., § 201.3, and a right to cross-examine witnesses appearing at the hearing, *id.*, § 201.5, those provisions of the Rules are made specifically inapplicable to investigations, *id.*, § 201.20, n26 even though the Commission is required [**1518] to [*448] initiate civil or criminal proceedings if an investigation discloses violations of law. n27 Undoubtedly, the reason for this distinction is to prevent the sterilization of investigations by burdening them with trial-like procedures.

n26 The Commission's practice with regard to investigations was described by the Attorney General's Committee on Administrative Procedure, Monograph, Securities Exchange Commission, 34-41. The following extract is pertinent here:

*"Where formal investigations are utilized as preliminaries to decisive proceedings, the person being investigated is normally not sent a notice, which, in any event, is not public.* The order for investigation, which includes the notice, is, however, exhibited to any person examined in the course of such investigation who so requests; since ordinarily the investigation will include the examination of the person suspected of violation, he will, thus, have actual notice of the investigation. Since a person may, on the other hand, be wholly unaware of the fact that he is being investigated until his friends who are interviewed so inform him, and since this may sometimes give rise to antagonism and a feeling that the Commission is besmirching him behind his back, no reason is apparent why, simply as a matter of good will, the Commission should not in ordinary cases send a copy of its order for investigation to the person under investigation.

. . . . .

"The Commission's Rules of Practice expressly provide that all such rules (governing notice, amendments, objections to evidence, briefs, and the like) are inapplicable to formal investigatory hearings in the absence of express provision to the contrary in the order and with the exception of rule II, which relates to appearance and practice by representatives before the Commission. The testimony given in such investigations is recorded . . .*In the usual case, witnesses are granted the right to be accompanied by counsel, but the latter's role is limited simply to advising the witnesses in respect of their right against self-incrimination without claiming the benefits of the immunity clause of the pertinent statute* (a right of which the presiding officer is, in any event, instructed to apprise the witnesses) and to making objections to questions which assertedly exceed the scope of the order of investigation." Id. , 37-38. (Emphasis supplied.) See also Loss, Securities Regulation (1951), 1152.

n27 Loss, Securities Regulation (1951), 1153. See also the statutes cited in the Appendix, *post*, p. 463.

Another type of executive agency which frequently conducts investigations is the presidential commission. Although a survey of these commissions presents no definite pattern of practice, each commission has generally [***1325] been permitted to adopt whatever rules of procedure seem appropriate to it, n28 and it is clear that many of the most famous presidential commissions have adopted rules similar to those governing the proceedings of the Civil Rights Commission. n29 For example, the Roberts Commission established in 1941 to ascertain the facts relating to the Japanese attack upon Pearl Harbor, and to determine whether the success of the attack resulted from any derelictions of duty on the part of American military personnel, did not permit any of the parties involved in the investigation to cross-examine other witnesses. In fact, many of the persons whose conduct was being investigated were not represented by counsel and were not present during the interrogation of other witnesses. Hearings before the Joint Committee on the Investigation of the Pearl

Harbor Attack, 79th Cong., 1st Sess., pts. 22-25.

n28 Marcy, Presidential Commissions, 97-101.

n29 See Appendix, *post,* pp. 472-479.

[***HR13] [***HR14] [***HR15] Having considered the procedures traditionally followed by executive and legislative investigating agencies, we think it would be profitable at this point to discuss the oldest and, perhaps, the best known of all investigative bodies, the grand jury. It has never been considered necessary to grant a witness summoned before the grand [*449] jury the right to refuse to testify merely because he did not have access to the identity and testimony of prior witnesses. Nor has it ever been considered essential that a person being investigated by the grand jury be permitted to come before that body and cross-examine witnesses who may have accused him of wrongdoing. Undoubtdly, the procedural rights claimed by the respondents have not been extended to grand jury hearings because of the disruptive influence their injection would have on the proceedings, and also because the grand jury merely investigates and reports. It does not try.

We think it is fairly clear from this survey of various phases of governmental investigation that witnesses appearing before investigating agencies, whether legislative, executive, or judicial, have generally not been accorded the rights of apprisal, confrontation, or crossexamination. Although we do not suggest that the grand jury and the congressional investigating committee are identical in all respects to the Civil Rights Commission, n30 we mention them, in addition to the executive agencies and commissions created by Congress, to show that the rules of this Commission are not alien to those which have historically governed [**1519] the procedure of investigations conducted by agencies in the three major branches of our Government. The logic behind this historical practice was recognized and described by Mr. Justice Cardozo's landmark opinion in *Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294.* In that [*450] case, the Court was concerned with the type of hearing [***1326] that the Tariff Commission was required to hold when conducting its investigations. Specifically, the Court was asked to decide whether the Tariff Act of 1922, 42 Stat. 858, gave witnesses appearing before the Commission the right to examine confidential information in the Commission files and to cross-examine other witnesses testifying at Commission hearings. Although the Court did not phrase its holding in terms of due process, we think that the following language from Mr. Justice Cardozo's opinion is significant:

"The Tariff Commission advises; these others ordain. There is indeed this common bond that all alike are instruments in a governmental process which according to the accepted classification is legislative, not judicial. . . . Whatever the appropriate label, the kind of order that emerges from a hearing before a body with power to ordain is one that impinges upon legal rights in a very different way from the report of a commission which merely investigates and advises. The traditionary forms of hearing appropriate to the one body are unknown to the other. What issues from the Tariff Commission as a report and recommendation to the President, may be accepted, modified, or rejected. If it happens to be accepted, it does not bear fruit in anything that trenches upon legal rights." *288 U.S., at 318.*

And in referring to the traditional practice of investigating bodies, Mr. Justice Cardozo had this to say:

"[Within] the meaning of this act the 'hearing' assured to one affected by a change of duty does not include a privilege to ransack the records of the Commission, and to subject its confidential agents to an examination as to all that they have learned. *There* [*451] *was no thought to revolutionize the practice of investigating bodies generally and of this one in particular." Id., at 319.* (Emphasis supplied.)

n30 However, the courts have on more than one occasion likened investigative agencies of the executive branch of Government to a grand jury. See, *e.g., United States v. Morton Salt Co., 338 U.S. 632, 642; Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 216; Consolidated Mines of Calif. v. Securities & Exchange Comm'n, 97 F. 2d 704, 708* (C.A. 9th Cir.); *Woolley v. United States, 97 F. 2d 258, 262* (C.A. 9th Cir.).

Thus, the purely investigative nature of the Commission's proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission's Rules of Procedure comport with the requirements of due process. n31

n31 The Commission cites *In re Groban, 352 U.S. 330,* and *Anonymous v. Baker, 360 U.S. 287,* in support of its position. Each of us who participated in those cases adheres to the view to which he subscribed therein. However, because there are significant differences between the *Groban* and *Anonymous* cases and the instant litigation, and because the result we reach today is supported by the other considerations analyzed herein, the Court does not find it necessary to discuss either of those cases.

Nor do the authorities cited by respondents support their position. They rely primarily upon *Morgan v. United States, 304 U.S. 1; Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123;* and *Greene v. McElroy, supra.* Those cases are all distinguishable in that the government agency involved in each was found by the Court to have made determinations in the nature of adjudications affecting legal [**1520] rights. Thus, in *Morgan,* the action of the Secretary of Agriculture in fixing the maximum rates to be charged by market agencies at stockyards was challenged. In voiding the order of the Secretary for his failure to conduct a trial-like hearing, the Court [***1327] referred to the adjudicatory nature of the proceeding:

"Congress, in requiring a 'full hearing,' had regard to judicial standards, -- not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature." *304 U.S., at 19.*

[*452] Likewise, in *Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 140-141,* this Court held that the Attorney General's action constituted an adjudication. Finally, our decision last year in *Greene* v. *McElroy* lends little support to the respondents' position. The governmental action there reviewed was certainly of a judicial nature. The various Security Clearance Boards involved in Greene were not conducting an investigation; they were determining whether Greene could have a security clearance -- a license in a real sense, and one that had a significant impact upon his employment. By contrast, the Civil Rights Commission does not make any binding orders or issue "clearances" or licenses having legal effect. Rather, it investigates and reports leaving affirmative

action, if there is to be any, to other governmental agencies where there must be action *de novo*.

[***HR16] The respondents have also contended that the Civil Rights Act of 1957 is inappropriate legislation under the Fifteenth Amendment. We have considered this argument, and we find it to be without merit. It would unduly lengthen this opinion to add anything to the District Court's disposition of this claim. See *177 F. Supp., at 819-821.*

[***HR17] Respondents' final argument is that the Commission's hearings should be governed by Section 7 of the Administrative Procedure Act, 60 Stat. 241, *5 U.S.C. § 1006*, which specifies the hearing procedures to be used by agencies falling within the coverage of the Act. One of those procedures is the right of every party to conduct "such cross-examination as may be required for a full and true disclosure of the facts." However, what the respondents fail to recognize is that Section 7, by its terms, applies only to proceedings under Section 4, 60 Stat. 238, *5 U.S.C. § 1003* (rule making), and Section 5, 60 Stat. [*453] 239, *5 U.S.C. § 1004* (adjudications), of the Act. As we have already indicated, the Civil Rights Commission performs none of the functions specified in those sections.

From what we have said, it is obvious that the District Court erred in both cases in enjoining the Commission from holding its Shreveport hearing. The court's judgments are accordingly reversed, and the cases are remanded with direction to vacate the injunctions.

*Reversed and remanded.*

[For opinion of MR. JUSTICE FRANKFURTER, concurring in the result, see *post*, p. 486.]

[For concurring opinion of MR. JUSTICE HARLAN, joined by MR. JUSTICE CLARK, see *post*, p. 493.]

[For dissenting opinion of MR. JUSTICE DOUGLAS, joined by MR. JUSTICE BLACK, see *post*, p. 493]

[***1328] [**1521] APPENDIX TO OPINION OF THE COURT n1

n1 This Appendix describes the Rules of Procedure governing the authorized investigative proceedings of a representative group of administrative agencies, executive departments, presidential commissions, and congressional committees. The Appendix does not purport to be a complete enumeration of the hundreds of agencies which have conducted investigations during the course of this country's history. Rather, it is designed to demonstrate that the procedures adopted by the Civil Rights Commission are similar to those which have traditionally been used by investigating agencies in both the executive and legislative branches of our Government.

Agency

*Executive and Administrative Agencies* n2 Atomic Energy Commission.

n2 We have found many other administrative agencies and presidential commissions empowered to conduct investigations and to subpoena witnesses. Those agencies are not listed in the body of this Appendix because we were unable to find an adequate description of the rules of procedure governing their investigative proceedings. However, it is significant that the statutes creating these

agencies made no reference to apprisal or cross-examination in investigative proceedings. Among the agencies in this category are: (1) Bureau of Corporations in the Department of Commerce and Labor, 32 Stat. 827; (2) Commission on Industrial Relations, 37 Stat. 415; (3) the Railroad Labor Board, 41 Stat. 469; (4) the United States Coal Commission, 42 Stat. 1023; (5) the Investigation Commission established by the Railroad Retirement Act of 1935, 49 Stat. 972; (6) National Bituminous Coal Commission, 49 Stat. 992; (7) Wage and Hour Division of the Department of Labor, 52 Stat. 1061; (8) Board of Investigation to Investigate Various Modes of Transportation, 54 Stat. 952; (9) Commission on Organization of the Executive Branch of the Government, 67 Stat. 143; (10) Commission on Intergovernmental Relations, 67 Stat. 145.

Scope of agency's investigative authority

The Commission is authorized to "make such studies and investigations, . . . and hold such meetings or hearings as . . . [it] may deem necessary or proper to assist it in exercising" any of its statutory functions. 68 Stat. 948, *42 U.S.C. § 2201* (c).

Extent of agency's subpoena power in investigative proceedings

The Commission may subpoena any person to appear and testify or produce documents "at any designated place." 68 Stat. 948, *42 U.S.C. § 2201* (c).

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Commission's Rules of Practice provide that "[t]he procedure to be followed in informal hearings shall be such as will best serve the purpose of the hearing." *10 CFR § 2.720*. The Rules of Practice do not require any specific type of notice to be given in informal hearings. *Ibid.*

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthene by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Commission's Rules of Practice do not require that those summoned to appear before informal hearings be given the right to cross-examine other witnesses. Rather, the Commission is given the discretion to adopt those procedures which "will best serve the purpose of the hearing." *10 CFR § 2.720*.

Miscellaneous comments

The Commission's Rules of Practice draw a sharp distinction between informal and formal hearings. Formal hearings are used only in "cases of adjudication," *10 CFR § 2.708*, and parties to the hearings are given detailed notice of the subject of the hearing, *id.*, § 2.735, as well as the right to cross-examine witnesses, *id.*, § 2.747. Informal hearings are used in investigations "for the purposes of obtaining necessary or useful information, and affording participation by interested persons, in the formulation, amendment, or rescission of rules and regulations." *Id.*, § 2.708. The safeguards which are accorded in the formal, adjudicative hearings are not mentioned in the Commission's Rule relating to informal hearings. *Id.*, § 2.720.

Agency

Federal Communications Commission.

Scope of agency's investigative authority

(1) The Commission is authorized to investigate any matters contained in a complaint "in such manner and by such means as it shall deem proper." 48 Stat. 1073, *47 U.S.C. § 208*. (2) The Federal Communications Commission was also authorized to conduct a special investigation of the American Telephone and Telegraph Company, and to obtain information concerning the company's history and structure, the services rendered by it, its failure to reduce rates, the effect of monopolistic control on the company, the methods of competition engaged in by the company, and the company's attempts to influence public opinion by the use of propaganda. 49 Stat. 43.

Extent of agency's subpoena power in investigative proceedings

(1) The Commission may "subpena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation." 48 Stat. 1096, *47 U.S.C. § 409* (e). (2) The Commission was also given the subpoena power by the statute authorizing the investigation of the American Telephone and Telegraph Company. 49 Stat. 45.

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Commission's Rules of Practice do not specify the type of notice to be given in investigative proceedings. However, the Rules do provide that the "[procedures] to be followed by the

Commission shall, unless specifically prescribed . . . [in the Rules], be such as in the opinion of the Commission will best serve the purposes of . . . [any investigative] proceeding." *47 CFR § 1.10*.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. Nor do the Commission's Rules of Practice refer to cross-examination in investigative proceedings. Therefore, whether persons appearing at an investigation have the privilege of cross-examining witnesses apparently depends upon whether the Commission is of the opinion that cross-examination "will best serve the purposes of such proceeding." *47 CFR § 1.10*. It should also be noted that even in that portion of the Commission's Rules relating to adjudicative proceedings, there is no specific provision relating to cross-examination. *Id.*, § § 1.101-1.193.

Miscellaneous comments

It should be noted that the Commission's Report on the Telephone Investigation made no mention of the type of notice, if any, given to those summoned to appear at the investigation. Nor was there any reference to cross-examination. The Commission did permit the Company "to submit statements in writing pointing out any inaccuracies in factual data or statistics in the reports introduced in the hearings or in any testimony in connection therewith, provided that such statements were confined to the presentation of facts and that no attempt would be made therein to draw conclusions therefrom." H.R. Doc. No. 340, 76th Cong., 1st Sess. xviii.

Agency

Federal Trade Commission.

Scope of agency's investigative authority.

(1) The Commission is authorized to investigate "the organization, business, conduct, practices, and management of any corporation engaged in commerce"; to make an investigation of the manner in which antitrust decrees are being carried out; to investigate and report the facts relating to any alleged violations of the anti-trust Acts by any corporation; and "to investigate . . . trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States." 38 Stat. 721-722, *15 U.S.C. § 46*. (2) The Commission was also authorized to conduct a special investigation of the motor vehicle industry to determine (a) "the extent of concentration of control and of monopoly in the manufacturing, warehousing, distribution, and sale of automobiles, accessories, and parts, including methods and devices used by manufacturers for obtaining and maintaining their control or monopoly. . . and the extent, if any, to which fraudulent, dishonest, unfair, and injurious methods . . . [were] employed,

including combinations, monopolies, price fixing, or unfair trade practices"; and (b) "the extent to which any of the antitrust laws of the United States . . . [were] being violated." 52 Stat. 218.

Extent of agency's subpoena power in investigative proceedings (1) The Commission may "subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." 38 Stat. 722, *15 U.S.C. § 49*.(2) The Commission was also given the subpoena power under the statute authorizing the investigation of the motor vehicle industry. 52 Stat. 218.

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

(1) This is not specified by statute. The Commission's Rules of Practice provide that "[a]ny party under investigation compelled to furnish information or documentary evidence shall be advised with respect to the purpose and scope of the investigation." 16 CFR, 1959 Supp., § 1.33. (2) The Commission's Report on the Motor Vehicle Industry did not indicate what type of notice, if any, was given to those summoned to testify at the investigation. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

(1) This is not specified by statute. The Commission's Rules of Practice provide that a person required to testify in an investigative proceeding "may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation." 16 CFR, 1959 Supp., § 1.40. Moreover, while the Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings, see *id.*, § 1.31-1.42, such a right is specifically given to parties in an adjudicative proceeding. *Id.*, § 3.16. (2) The Commission's Report on the Motor Vehicle Industry did not refer to cross-examination. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.

Miscellaneous comments. (1) It is interesting to note that the Commission's Rules of Practice draw an express and sharp

distinction between investigative and adjudicative proceedings, and that the Commission's Rules relating to notice and cross-examination in investigative proceedings are very similar to those adopted by the Civil Rights Commission. (2) It should also be observed that FTC investigations may be initiated "upon complaint by members of the consuming public, businessmen, or the concerns aggrieved by unfair practices," 16 CFR, 1959 Supp., § 1.11, and that complaints received by the Commission may charge "any violation of law over which the Commission has jurisdiction." *Id.*, § 1.12. (3) Also relevant to our inquiry is the fact that the Commission does not "publish or divulge the name of an applicant or complaining party." *Id.*, § 1.15. (4) Finally, it is important to observe that the FTC, unlike the Civil Rights Commission, has the authority to commence adjudicative proceedings based upon the material obtained by means of investigative proceedings. *Id.*, § 1.42.

Agency. National Labor Relations Board.

Scope of agency's investigative authority. Under the National Labor Relations Act, the Board is given the power to investigate petitions and charges submitted to it relating to union representation and unfair labor practices. 61 Stat. 144, 149, *29 U.S.C. § § 159* (c), 160 (l).

Extent of agency's subpoena power in investigative proceedings. "For the purpose of all hearings and investigations . . . the Board [may] . . . copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation," and it may also issue subpoenas requiring the attendance and testimony of witnesses in any proceeding or investigation. 61 Stat. 150, *29 U.S.C. § 161.*

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the preliminary investigation of all petitions and charges received by the Board. Although a copy of the initial charge may be served upon an alleged violator, there is no specific rule requiring the Board to give notice of the preliminary investigation. See 29 CFR, 1960 Supp., § § 101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint

special boards to investigate the causes of marine casualties.

This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the right to cross-examine witnesses at formal, adjudicative hearings, 29 CFR, 1960 Supp., § § 101.10, 102.38, 102.66, 102.86, 102.90, but there is no such provision with regard to preliminary investigations. *Id.*, § § 101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.

Miscellaneous comments. It should be noted that the National Labor Relations Board may use the information collected during preliminary investigations to initiate adjudicative proceedings. 61 Stat. 149, *29 U.S.C. § 160* (l). The Commission on Civil Rights has no such power. Moreover, the Board, unlike the Civil Rights Commission, may use the information obtained by it through investigations to petition the federal courts for appropriate injunctive relief, 61 Stat. 149, *29 U.S.C. § 160* (l).

Agency. Securities and Exchange Commission.

Scope of agency's investigative authority.(1) Under the Securities Act of 1933, as amended, the Commission is authorized to conduct "all investigations which . . . are necessary and proper for the enforcement of" the Act. 48 Stat. 85, *15 U.S.C. § 77s* (b). (2) The Securities Exchange Act of 1934 authorizes the Commission to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provisions of . . . [the Act] or any rule or regulation thereunder." 48 Stat. 899, *15 U.S.C. § 78u* (a). (3) The Public Utility Holding Company Act of 1935 empowers the Commission to "investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of . . . [the Act] or any rule or regulation thereunder, or to aid in the enforcement of the provisions of . . . [the Act], in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which . . . [the Act] relates." 49 Stat. 831, *15 U.S.C. § 79r* (a). (4) The Trust Indenture Act of 1939 authorizes the Commission to conduct "any investigation . . . which . . . is necessary and proper for the enforcement of" the Act. 53 Stat. 1174, *15 U.S.C. § 77uuu* (a). (5) The Investment Company Act of 1940 gives the Commission the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of . . . [the Act] or of any rule, regulation, or order thereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under . . . [the Act] against a particular person or persons, or with respect to a particular person or persons, or with respect to a particular transaction or transactions." 54 Stat. 842, *15 U.S.C. § 80a-41* (a). (6) Finally, under the Investment Advisers Act of 1940, the Commission is authorized to determine by investigation whether "the provisions of . . . [the Act] or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person." 54 Stat. 853, *15 U.S.C. § 80b-9* (a).

Extent of agency's subpoena power in investigative proceedings. All of the Acts which authorize the Commission to conduct investigations also bestow upon it the power to subpoena witnesses, compel their attendance, and require the production of any books, correspondence, memoranda, contracts, agreements, and other records which are relevant to the investigation. Securities Act of 1933, 48 Stat. 85, *15 U.S.C. § 77s* (b); Securities Exchange Act of 1934, 48 Stat. 900, *15 U.S.C. § 78u* (b); Public Utility Holding Company Act of 1935, 49 Stat. 831, *15 U.S.C. § 79r* (c); Trust Indenture Act of 1939, 53 Stat.

1174, *15 U.S.C. § 77uuu* (a); Investment Company Act of 1940, 54 Stat. 842, *15 U.S.C. § 80a-41* (b); Investment Advisers Act of 1940, 54 Stat. 853, *15 U.S.C. § 80b-9* (b).

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. Nor do the Commission's Rules of Practice relating to formal investigations make any mention of the type of notice which must be given in such proceedings. *17 CFR § 202.4*. The Commission's Rules do provide for the giving of notice in adjudicative proceedings, *id.*, 1959 Supp., § 201.3, but this provision is made specifically inapplicable to investigative proceedings. *Id.*, § 201.20.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Commission's Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings. *17 CFR § 202.4*. Parties are given the right to cross-examine witnesses in adjudicative proceedings, *id.*, § 201.5, but this provision is made specifically inapplicable to investigative proceedings. *Id.*, § 201.20.

Miscellaneous comments. The Securities and Exchange Commission's procedures for investigative proceedings are very similar to those of the Civil Rights Commission. Investigations may be initiated upon complaints received from members of the public, and these complaints may contain specific charges of illegal conduct. *17 CFR § 202.4*. It should be noted, however, that the Securities and Exchange Commission, unlike the Civil Rights Commission, is an adjudicatory body, and it may use the information gathered through investigative proceedings to initiate "administrative proceedings looking to the imposition of remedial sanctions, . . . (or) injunction proceedings in the courts, and, in the case of a willful violation," it may refer the "matter to the Department of Justice for criminal prosecution." *Ibid.* See also Securities Act of 1933, 48 Stat. e committee, from time to time, as the occasion arises. "Hea86, *15 U.S.C. § 77t* (b); Securities Exchange Act of 1934, 48 Stat. 900, *15 U.S.C. § 78u* (e); Public Utility Holding Company Act of 1935, 49 Stat. 832, *15 U.S.C. § 79r* (f); Investment Company Act of 1940, 54 Stat. 843, *15 U.S.C. § 80a-41*

(e); Investment Advisers Act of 1940, 54 Stat. 854, *15 U.S.C. § 80b-9* (e).

Agency. Office of Price Stabilization. n5

n5 The Office of Price Stabilization is now defunct, having been terminated by Exec. Order No. 10434, *18 Fed. Reg. 809.*

Scope of agency's investigative authority. The Defense Production Act of 1950 authorized the President "to issue regulations and orders establishing a ceiling or ceilings on the price, rental, commission, margin, rate, fee, charge, or allowance paid or received on the sale or delivery, or the purchase or receipt, by or to any person, of any material or service, and at the same time . . . issue regulations and orders stabilizing wages, salaries, and other compensation in accordance with provisions of" the Act. 64 Stat. 803. This authority was delegated to the Economic Stabilization Administrator by Exec. Order No. 10161, *15 Fed. Reg. 6105.* The Administrator in turn delegated the duty of issuing price regulations to the Office of Price Stabilization. Gen. Order No. 2 of the Economic Stabilization Agency, *16 Fed. Reg. 738.* Pursuant to this authority, the Office of Price Stabilization promulgated Rules of Procedure, Section 2 of which provided that investigations would be held before the issuance of a ceiling price regulation. Price Procedural Regulation 1, Revision 2 -- General Price Procedures, § 2, *17 Fed. Reg. 3788.*

Extent of agency's subpoena power in investigative proceedings. The Defense Production Act of 1950 conferred upon the President the power, "by subpena or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of . . . [the] Act and the reguations or orders issued thereunder." 64 Stat. 816. This power was delegated to the Office of Price Stabilization by Exec. Order No. 10161, *15 Fed. Reg. 6105;* Gen. Order No. 2 of the Economic Stabilization Agency, *16 Fed. Reg. 738.*

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra,* requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by statute or Executive Order. The Office's Rules of Procedure provided that a general public notice was to be given in the Federal Register of all pre-issuance hearings. Price Procedural Regulation 1 -- General Price Procedures, § 4, *17 Fed. Reg. 3788.*

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that

in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by statute or Executive Order. Nor did the Office's Rules of Procedure make any mention of the right to cross-examine witnesses appearing at preissuance hearings. The Rules merely said that the hearing was to "be conducted in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of the evidence by such persons as are, in the judgment of the Director, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." Price Procedural Regulation 1 -- General Price Procedures, § 5, *17 Fed. Reg. 3788.*

Miscellaneous comments. It should be noticed that the Office's preissuance hearings usually led to determinations which had severe effects upon certain individuals; yet, there was no provision for personalized, detailed notice or cross-examination.

Agency. Office of Price Administration. n6

n6 The Office of Price Administration is now defunct, its functions having been transferred to the Office of Temporary Controls by Exec. Order No. 9809, *11 Fed. Reg. 14281*, which in turn was terminated by Exec. Order No. 9841, *12 Fed. Reg. 2645.*

Scope of agency's investigative authority. The Administrator was "authorized to make such studies and investigations and to obtain such information as he . . . [deemed] necessary or proper to assist him in prescribing any regulation or order under . . . [the] Act, or in the administration and enforcement of . . . [the] Act and regulations, orders, and price schedules thereunder." 56 Stat. 30.

Extent of agency's subpoena power in investigative proceedings. "For the purpose of obtaining any information [in an investigation] . . . the Administrator . . . [could] by subpena require any . . . person to appear and testify or to appear and produce documents, or both, at any designated place." 56 Stat. 30.

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by statute. The Administrator's Rules of Procedure did not specify the type of notice, if any, to be given during the investigative stage of price regulation proceedings. 32 CFR, 1944 Supp., § 1300.2. After the investigation, the Administrator could hold a price hearing prior to issuance of the regulation, and general notice of the hearing was to be published in the Federal Register. *Id.*, § 1300.4.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by statute. The Administrator's Rules of Procedure made no mention of the right to cross-examine witnesses during either investigations or preissuance hearings. 32 CFR, 1944 Supp., § § 1300.2, 1300.5. The Rules merely provided that hearings were to be conducted "in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of evidence by such persons as are, in the judgment of the Administrator, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." *Id.*, § 1300.5.

Miscellaneous comments. It should be noted that even though the Administrator's proceedings smacked of an adjudication, there was no express requirement that either detailed notice or the right to cross-examine witnesses be given to parties affected by the Administrator's actions.

Agency. The Department of Agriculture.

Scope of agency's investigative authority. (1) Under the Perishable Agricultural Commodities Act of 1930, the Department is authorized to investigate any complaint filed with the Secretary alleging that someone has violated the Act.46 Stat. 534, *7 U.S.C. § 499f*(c). (2) The Department also enforces the Packers and Stockyards Act of 1921, which, for the purposes of that Act, gives the Secretary the investigative and other enforcement powers possessed by the Federal Trade Commission, 42 Stat. 168, *7 U.S.C. § 222.* The Department's Rules of Practice also provide that investigations shall be conducted when informal complaints charging a violation of the Act are received by the Secretary. *9 CFR § 202.23*.

Extent of agency's subpoena power in investigative proceedings. (1) The Perishable Agricultural Commodities Act of 1930 authorizes the Secretary to "require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under" the Act. 46 Stat. 536, *7 U.S.C. § 499m* (b). (2) The Packers and Stockyards Act of 1921 gives to the Secretary those powers conferred upon the Federal Trade Commission by "sections 46 and 48-50 of Title 15." Among those powers is the authority to subpoena witnesses. 42 Stat. 168, *7 U.S.C. § 222.*

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice

in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Department's Rules of Practice adopted pursuant to the Perishable Agricultural Commodities Act and the Packers and Stockyards Act do not refer to the type of notice, if any, which must be given in investigative proceedings, *7 CFR § 47.3*; *9 CFR § 202.3*, although a specific right to notice is given in adjudicative proceedings. *7 CFR § § 47.6*, 47.27; *9 CFR § § 202.6*, 202.23, 202.39.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Department's Rules of Practice adopted pursuant to the Perishable Agricultural Commodities Act and the Packers and Stockyards Act contain no reference to cross-examination during investigative proceedings, *7 CFR § 47.3*; *9 CFR § 202.3*, although such a right is given in the formal, adjudicative stage of the proceedings. *7 CFR § § 47.15*, 47.32; *9 CFR § § 202.11*, 202.29, 202.48.

Miscellaneous comments. (1) The Department of Agriculture, unlike the Civil Rights Commission, may use the information obtained through investigations in its subsequent adjudicative proceedings under the Perishable Agricultural Commodities Act. *7 CFR § 47.7*. (2) It is also of interest that investigative proceedings under both the Perishable Agricultural Commodities Act and the Packers and Stockyards Act are commenced by the filing of complaints from private individuals. *7 CFR § 47.3*; *9 CFR § 202.3*. (3) Finally, it should be noted that the Department of Agriculture administers the Federal Seed Act, 53 Stat. 1275, *7 U.S.C.§ § 1551*-1610, which makes it unlawful to engage in certain practices relating to the labeling and importation of seeds, and a statute regulating export standards for apples and pears, 48 Stat. 123, *7 U.S.C. § § 581*-589. The Rules of Practice adopted by the Secretary pursuant to statutory authorization provide that proceedings under these statutes shall be initiated by an investigation of the charges contained in any complaint received by the Secretary. These Rules make no mention of the type of notice, if any, given to those being investigated; nor is there any reference to cross-examination during the investigative stage of the proceedings. *7 CFR § § 201.151*, 33.17.

Agency. Commodity Exchange Commission (Department of Agriculture).

Scope of agency's investigative authority. The Commodity Exchange Act empowers the Secretary of Agriculture (acting through the Commission) to "make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of" the Act. The Secretary is also empowered

to "investigate marketig conditions of commodity and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges." 42 Stat.1003, as amended, 49 Stat. 1491, *7 U.S.C. § 12*.

Extent of agency's subpoena power in investigative proceedings. The Secretary of Agriculture (acting through the Commission) is given the same subpoena powers as are vested in the Interstate Commerce Commission by the Interstate Commerce Act, 24 Stat. 383, 27 Stat. 443, 32 Stat. 904, 34 Stat. 798, *49 U.S.C. § § 12*, 46-48. 42 Stat. 1002, as amended, 49 Stat. 1499, 69 Stat. 160, *7 U.S.C. § 15*.

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Commission has no special rules for investigations; however, its Rules of Practice provide that a private party may initiate a disciplinary proceedings by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the type of notice, if any, which must be given in investigative proceedings. *17 CFR § 0.53*.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Commission has no special rules for investigation; however, its Rules of Practice provide that a private party may initiate a disciplinary proceeding by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the right to cross-examine witnesses during investigative proceedings. *17 CFR § 0.53*.

Miscellaneous comments. It is of interest to note that investigations may be initiated by complaints from private parties, and that the information obtained during investigations may be used in a subsequent adjudicative proceeding. *17 CFR § 0.53*.

Agency. Food and Drug Administration (Department of Health, Education and Welfare).

Scope of agency's investigative authority. The Regulations adopted pursuant to the Federal Caustic Poison Act, 44 Stat. 1406, *15*

*U.S.C. § § 401*-411, authorize the Administration to conduct investigations, *21 CFR § 285.15*, and to hold preliminary hearings "whenever it appears . . . that the provisions of section 3 or 6 of the Caustic Poison Act . . . have been violated and criminal proceedings are contemplated." *Id.*, § 285.17.

Extent of agency's subpoena power in investigative proceedings. The Act makes no provision for compelling testimony.

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This is not specified by statute. The Administration's Regulations make no reference to notice of investigative proceedings, but they do require that general notice be given to those against whom prosecution is contemplated. *21 CFR § 285.17*.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Administration's regulations make no mention of the right to cross-examine witnesses appearing at investigative proceedings or preliminary hearings. *21 CFR § 285.17*.

Miscellaneous comments. It should be noted that the Administration investigates specific instances of possible unlawful activity, and that, unlike the Civil Rights Commission, the Secretary (acting through the Administration) is required to refer possible violations to the proper United States Attorney. 44 Stat. 1409, *15 U.S.C. § 409* (b).

Agency. Presidential Commissions United States Tariff Commission.

Scope of agency's investigative authority. (1) The Commission is authorized "to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, . . . the operation of customs laws, including their relation to the Federal revenues, [and] their effect upon the industries and labor

of the country." 46 Stat. 698, *19 U.S.C. § 1332* (a). (2) The Commission is also authorized "to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production." 46 Stat.698, 19 U.S.C. § 1332 (b). (3) The Commission may investigate "the Paris Economy Pact and similar organizations and arrangements in Europe." 46 Stat. 698, *19 U.S.C. § 1332* (c). (4) The Commission is empowered to "investigate the difference in the costs of production of any domestic article and of any like or similar foreign article." 46 Stat. 701, *19 U.S.C. § 1336* (a). (5) The Commission is authorized to investigate any complaint alleging that a person has engaged in unfair methods of competition or unfair acts in the importation of articles into the United States. 46 Stat. 703, *19 U.S.C. § 1337* (a), (b). (6) Before the President enters into negotiations concerning any proposed foreign trade agreement, the Commission is required to conduct an investigation and make a report to the President, indicating the type of agreement which will best carry out the purpose of the Tariff Act.65 Stat. 72, *19 U.S.C. § 1360* (a). (7) The Commission is authorized to "make an investigation and make a report thereon . . . to determine whether any product upon which a concession has been granted under a trade agreement is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products." 65 Stat. 74, *19 U.S.C. § 1364*(a). (8) The Commission is authorized to investigate the effects of dumping, and to determine whether because of such dumping, "an industry in the United States is being or is likely to be injured, or is prevented from being established." 42 Stat. 11, *19 U.S.C. § 160*(a). (9) Finally, the Commission is authorized to conduct investigations for the purpose of determining whether "any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under" the Agricultural Adjustment Act or the Soil Conservation and Domestic Allotment Act. 49 Stat. 773, as amended, 62 Stat. 1248, *7 U.S.C. § 624* (a).

Extent of agency's subpoena power in investigative proceedings. The Commission may, "for the purposes of carrying out its functions and duties in connection with any investigation authorized by law, . . . (1) . . . have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, co-partnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) . . . summon witnesses, take testimony, and administer oaths, (3) . . . require any firm, person, co-partnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) . . . require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to such investigation." 46 Stat. 699, as amended, 72 Stat. 679, *19 U.S.C. § 1333* (a).

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

Many of the statutory provisions authorizing the Commission to hold hearings pursuant to its investigatory power require that reasonable notice of prospective hearings be given. 46 Stat. 701, *19 U.S.C. § 1336* (a); 65 Stat. 72, *19 U.S.C. § 1360* (b)(1); 65 Stat. 74, *19 U.S.C. § 1364* (a); 49 Stat. 774, *7 U.S.C. § 624* (a).The Commission's Rules of Practice also provide that public notice of any pending investigation shall be given. 19 CFR, 1960 Supp., § 201.10.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This is not specified by statute. The Commission's Rules permit a party who has entered an appearance to question a witness "for the purpose of assisting the Commission in obtaining the material facts with respect to the subject matter of the investigation." *19 CFR § 201.14*. However, all questioning is done under the direction of and subject to the limitations imposed by the Commission, and a person who has not entered a formal appearance may not, as a matter of right, question witnesses. *Ibid.* See also *Norwegian Nitrogen Products Co. v. United States, 288 U.S. 294.*

Miscellaneous comments. (1) Since the Commission's investigative powers are generally exercised to aid the President in the execution of his duties under the Tariff Act, it is readily apparent that the Commission's investigations may have far reaching effects upon those persons affected by specific tariff regulations. (2) It should also be noted that business data given to the Commission may be classified as confidential, *19 CFR § 201.6*, and that confidential material contained in applications for investigation and complaints will not be made available for public inspection. *Id.*, § 201.8.

Agency. Commission To Investigate the Japanese Attack on Hawaii.

Scope of agency's investigative authority. The Commission was authorized to investigate the attack upon Pearl Harbor in order "to provide bases for sound decisions whether any derelictions of duty or errors of judgment on the part of the United States Army or Navy personnel contributed to such successes as were achieved by the enemy on the occasion mentioned, and if so, what these derelictions or errors were, and who were responsible

therefor." Exec. Order No. 8983, *6 Fed. Reg. 6569.*

Extent of agency's subpoena power in investigative proceedings. The Commission was authorized "to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." 55 Stat. 854.

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra,* requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

Neither the Executive Order creating the Commission, Exec. Order No. 8983, *6 Fed. Reg. 6569,* nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, required the Commission to inform prospective witnesses of complaints lodged against them.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.,* 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

Neither the Executive Order creating the Commission, Exec. Order No.8983, *6 Fed. Reg. 6569,* nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, made any mention of the right to cross-examine witnesses. An examination of the Commission's proceedings does not disclose instances wherein any witness or party to the investigation was given the right to cross-examine other witnesses. In fact, such interested parties as Admiral Kimmel and General Short, the Navy and Army commanders at Pearl Harbor, were not even present at the hearings when other witnesses were testifying. Hearings of the Joint Congressional Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., 1st Sess., pts. 22-25.

Miscellaneous comments. It is of special interest that the Commission was charged with the responsibility of determining whether the successful attack upon Pearl Harbor resulted from any individual derelictions of duty. Yet, even though the Commission's investigation had all the earmarks of an adjudication, none of the procedural safeguards demanded by the respondents in these cases were provided.

Agency. Temporary National Economic Committee.

Scope of agency's investigative authority. The Committee was authorized to investigate

"monopoly and the concentration of economic power in and financial control over production and distribution of goods and services . . . with a view to determining . . . (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption, and (3) the effect of existing tax, patent, and other Government policies upon competition, price levels, unemployment, profits, and consumption." 52 Stat. 705.

Extent of agency's subpoena power in investigative proceedings. The Committee was given the same subpoena powers as were conferred upon the Securities and Exchange Commission by the Public Utility Holding Company Act, 49 Stat. 831, *15 U.S.C. § 79r*(c). 52 Stat. 706.

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra,* requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings made no mention of the type of notice, if any, which was to be given to prospective witnesses. Hearings of the Temporary National Economic Committee, pt. 1. 193.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings did not refer to cross-examination. There was merely a general statement that "[i]n all examination of witnesses, the rules of evidence shall be observed but liberally construed." Hearings of the Temporary National Economic Committee, pt. 1, 193.

Agency. Congressional Investigating Committees n7 Senate Committee of Privileges (1800).

> n7 In addition to the investigating committees listed in the body of the Appendix, we think mention should also be made of the contemporary standing committees of Congress. Most of these committees have rules very similar to those adopted by the Civil Rights Commission. The Rules of Procedure of

the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration are typical. Rule 17 of the Rules reads as follows:

"There shall be no direct or cross examination by counsel appearing for a witness. However, the counsel may submit in writing any question or questions he wishes propounded to his client or to any other witness. With the consent of the majority of the Members of the Subcommittee present and voting, such question or questions shall be put to the witness by the Chairman, by a Member of the Subcommittee or by the Counsel of the Subcommittee either in the original form or in modified language. The decision of the Subcommittee as to the admissibility of questions submitted by counsel for a witness, as well as to their form, shall be final."

See also S. Rep. No. 2, 84th Cong., 1st Sess. 20; Hearings before the Subcommittee on Rules of the Senate Committee on Rules and Administration, on S. Res. 65, 146, 223, 249, 253, 256, S. Con. Res. 11, and 86, 83d Cong., 2d Sess., Part 3, 141-142, 344, 345, 374; Rules of Procedure of the Select Committee on Improper Activities in the Labor or Management Field, Rules 10 and 11. Reference has been made in the text, supra, pp. 436-439, to the House "fair play" rules, which govern the hearings of most House Committees, and which make no provision for cross-examination.

Scope of agency's investigative authority. The Committee was authorized to conduct an investigation into charges that William Duane, a newspaper editor, had published articles defaming the Senate. 10 Annals of Cong. 117 (1800).

Extent of agency's subpoena power in investigative proceedings.The Committee was authorized "to send for persons, papers, and records, and compel the attendance of witnesses which may become requisite for the execution of their commission." 10 Annals of Cong. 121 (1800).

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution. However, a subsequent resolution provided that Duane was to be informed of the charges against him when he presented himself at the bar of the Senate. 10 Annals of Cong. 117 (1800).

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress

has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.,* 49 Stat. 1381, which authorized the Secretary of Commere to appoint special boards to investigate the causes of marine casualties.

This was not specified by the authorizing resolution. The Senate later rejected a motion to permit Duane "to have assistance of counsel for his defense," but allowed him to be heard through counsel "in denial of any facts charged against [him] or in excuse and extenuation of his offence." 10 Annals of Cong. 118, 119 (1800).

Miscellaneous comments. It should be noted that this Committee was investigating the allegedly unlawful conduct of a specific individual; yet, it does not appear that he was given the right to cross-examine adverse witnesses.

Agency. Committee of the Senate to Investigate Whether Senator John Smith of Ohio Should Retain His Seat in the Senate (1807).

Scope of agency's investigative authority. Senator Smith had been accused of conspiring with Aaron Burr to commit treason, and the Committee was established to investigate the charges and to inquire whether Senator Smith "should be permitted any longer to have a seat" in the Senate. 17 Annals of Cong. 40 (1807).

Extent of agency's subpoena power in investigative proceedings. The authorizing resolution did not indicate whether the Committee had the subpoena power. 17 Annals of Cong. 40 (1807).

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution. The Committee furnished Senator Smith with a description of the charges and evidence against him. Report of the Committee, 17 Annals of Cong. 56 (1807).

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.,* 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by the authorizing resolution. Before the Committee, Senator Smith "claimed, as a right, to be heard in his

defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the Committee had been a circuit court of the United States." Report of the Committee, 17 Annals of Cong. 56 (1807). However, the Committee rejected these claims on the ground that it was not a court, but rather a body whose function it was to investigate and report the facts relating to Senator Smith's conduct. *Ibid.*

Miscellaneous comments. Here again, it should be observed that the Committee was investigating the conduct of a particular individual, and that the Committee's findings could have had severe consequences on that individual.

Agency. Joint Committee on the Conduct of the Civil War (1861).

Scope of agency's investigative authority. (1) The Committee was established "to inquire into the conduct of the present [Civil] war." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861). (2) The Committee was also authorized "to inquire into the truth of the rumored slaughter of the Union troops, after their surrender, at the recent attack of the rebel forces upon Fort Pillow, Tennessee; as, *[sic]* also, whether Fort Pillow could have been sufficiently reenforced or evacuated, and, if so, why it was not done." 13 Stat. 405.

Extent of agency's subpoena power in investigative proceedings. The Committee had "the power to send for persons and papers." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861).

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra*, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were given no notice of the charges that had been leveled against them. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were not given the right to be assisted by counsel or to cross-examine other witnesses. Botterud, The Joint Committee on the Conduct of the Civil War

(M.A. Thesis, Georgetown University, 1949), 42.

Miscellaneous comments. It should be noted that the Committee's investigation frequently centered on the allegedly derelict conduct of specific individuals. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.

Agency. House Committee to Investigate the Electric Boat Company of New Jersey (1908).

Scope of agency's investigative authority.The Committee was established to investigate charges that the Electric Boat Company of New Jersey had "been engaged in efforts to exert corrupting influence on certain Members of Congress in their legislative capacities, and . . . [had], in fact, exerted such corrupting influence." H.R. Res. 288, 60th Cong., 1st Sess., 42 Cong. Rec. 2972.

Extent of agency's subpoena power in investigative proceedings. The Committee had authority "to send for persons and papers." H.R. Res. 288, 60th Cong., 1st Sess. , 42 Cong. Rec. 2972.

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, supra, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution. However, most of the charges which led to the investigation were made in public hearings before the Rules Committee of the House. H.R. Rep. No. 1168, 60th Cong., 1st Sess.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

The questioning of all witnesses was conducted by the Committee, although the parties being investigated were permitted to submit written interrogatories for the Committee to propound to certain witnesses. H.R. Rep. No. 1727, 60th Cong., 1st Sess. 11.

Miscellaneous comments. It is of interest that the Committee was investigating specific charges of corruption leveled against named individuals.

Agency. House Committee to Investigate Violations of the Antitrust Laws by the American Sugar Refining Co. (1911).

Scope of agency's investigative authority. (1) The Committee was authorized to conduct

an investigation "for the purpose of ascertaining whether or not there have been violations of the antitrust act of July 2, 1890, and the various acts supplementary thereto, by the American Sugar Refining Co.," and further, to "investigate the organization and operations of said American Sugar Refining Co., and its relations with other persons or corporations engaged in the business of manufacturing or refining sugar, and all other persons or corporations engaged in manufacturing or refining sugar and their relations with each other." H.R. Res., 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.

Extent of agency's subpoena power in investigative proceedings. The Committee was authorized "to compel the attendance of witnesses, [and] to send for persons and papers." H.R. Res. 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.

The type of notice required to be given in investigative proceedings. n3

n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, supra, requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution. Nor was this specified by the Committee's Rules of Procedure.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by the authorizing statute. The Committee's Rules of Procedure provided that "counsel may attend witnesses summoned before this committee, but may not participate in the proceedings, either by way of examination or argument, except upon permission given by the committee, from time to time, as the occasion arises." Hearings before the Special Committee on the Investigation of the American Sugar Refining Co., 62d Cong., 1st Sess., Vol. 1, 3.

Miscellaneous comments. Once again, it should be noted that the Committee was established to investigate, among other things, possible violations of the law.

Agency. Senate Committee to Investigate Lobbying (1935-1936).

Scope of agency's investigative authority. The Committee was authorized "to make a full and complete investigation of all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly, in connection with the so-called 'holding-company bill', or any other matter or proposal affecting legislation." S.

Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.

Extent of agency's subpoena power in investigative proceedings. The Committee was authorized "to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents . . . as it . . . [deemed] advisable." S. Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.

The type of notice required to be given in investigative proceedings. n3

> n3 If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on p. 473, *supra,* requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

This was not specified by the authorizing resolution.

The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings. n4

> n4 If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.,* 49 Stat. 1381, which authorized the Secretary of Commerce to appoint special boards to investigate the causes of marine casualties.

This was not specified by the authorizing resolution. The Committee adopted a rule that witnesses and their attorneys could not examine other witnesses; however, they could submit written questions, which the Committee would consider propounding to other witnesses. Hearings before Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 2d [***1352] Sess. 1469.

**CONCURBY:**

FRANKFURTER;

**CONCUR:**

[*486] [**1542contd]

[EDITOR'S NOTE: The page number of this document may appear to out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

MR. JUSTICE FRANKFURTER, concurring in the result.

The United States Commission on Civil Rights, in exercising powers granted to it by the Civil Rights Act of 1957 (71 Stat. 635, *42 U.S.C. § 1975c),* scheduled a hearing to be held by it in Shreveport, Louisiana, on July 13, 1959. By these two actions judgments were sought to declare the proposed hearing illegal and to restrain the members of the Commission from holding it.

The rules of procedure formulated by the Commission amply rest on leave of Congress. I need add nothing on this phase of the case to

the Court's opinion. While it is a most salutary doctrine of constitutional adjudication to give a statute even a strained construction to avoid facing a serious doubt of constitutionality, "avoidance of a difficulty will not be pressed to the point of disingenuous evasion. Here the intention of the Congress is revealed too distinctly to permit us to ignore it because of mere misgivings as to power. The problem must be faced and answered." *Moore Ice Cream Co. v. Rose, 289 U.S. 373, 379.* I have no such misgivings in the situation before us. I also agree with the Court's conclusion in rejecting the constitutional claims of the plaintiffs. In view, however, of divergencies between the Court's analysis and mine of the specific issues before us, including the authoritative relevance of *In re Groban, 352 U.S. 330,* and *Anonymous No. 6 v. Baker, 360 U.S. 287,* I state my reasons for agreement.

To conduct the Shreveport hearing on the basis of sworn allegations of wrongdoing by the plaintiffs, without submitting to them these allegations and disclosing the identities of the affiants, would, it is claimed, violate the Constitution. The issue thus raised turns exclusively on the application of the Due Process Clause of the Fifth Amendment. The Commission's hearings are not proceedings requiring a person to answer for an "infamous crime," which must be based on an indictment of a grand [*487] jury (Amendment V), nor are they "criminal prosecutions" giving an accused the rights defined by Amendment VI. Since due process is the constitutional axis on which decision must turn, our concern is not with absolutes, either of governmental power or of safeguards protecting individuals. Inquiry must be directed to the validity of the adjustment between these clashing interests - that of Government and of the individual, respectively -- in the procedural scheme devised by the Congress and the Commission. Whether the scheme satisfies those strivings for justice which due process guarantees, must be judged in the light of reason drawn from the considerations of fairness that reflect our traditions of legal and political thought, duly related to the public interest Congress sought to meet by this legislation as against the hazards or hardship to the individual that the Commission procedure would entail.

Barring rare lapses, this Court has not unduly confined those who have the responsibility of governing within a doctrinaire conception of "due process." The Court has been mindful of the manifold variety and perplexity of the tasks which the Constitution has vested in the legislative and executive branches of the Government by recognizing that what is unfair in one situation may be [***1353] fair in another. Compare, for instance, [**1543] *Murray's Lessee v. Hoboken Land & Improvement Co., 18 How. 272,* with *Ng Fung Ho v. White, 259 U.S. 276,* and see *Communications Comm'n v. WJR, 337 U.S. 265, 275.* Whether the procedure now questioned offends "the rudiments of fair play," *Chicago, M. & St. P.R. Co. v. Polt, 232 U.S. 165, 168,* is not to be tested by loose generalities or sentiments abstractly appealing. The precise nature of the interest alleged to be adversely affected or of the freedom of action claimed to be curtailed, the manner in which this is to be done and the reasons for doing it, the balance of individual hurt and the justifying public good - these and such like are the [*488] considerations, avowed or implicit, that determine the judicial judgment when appeal is made to "due process."

The proposed Shreveport hearing creates risks of harm to the plaintiffs. It is likewise true that, were the plaintiffs afforded the procedural rights they seek, they would have a greater opportunity to reduce these risks than will be theirs under the questioned rules of the Commission. Some charges touching the plaintiffs might be withdrawn or modified, if those making them knew that their identities and the content of their charges were to be revealed. By the safeguards they seek the

plaintiffs might use the hearing as a forum for subjecting the charges against them to a scrutiny that might disprove them or, at least, establish that they are not incompatible with innocent conduct.

Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides. The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate to inquiries into individual blameworthiness would be to divert and frustrate its purpose. Its investigation would be turned into a forum for the litigation of individual culpability -- matters which are not within the keeping [*489] of the Commission, with which it is not effectively equipped to deal, and which would deflect it from the purpose for which it was within its limited life established.

We would be shutting our eyes to actualities to be unmindful of the fact that it would dissuade sources of vitally relevant information from making that information known to the Commission, if the Commission were required to reveal its sources and subject them to crossexamination. This would not be a valid consideration for secrecy were the Commission charged with passing official incriminatory or even defamatory judgment on individuals. Since the Commission is merely an investigatorial arm of Congress, the narrow risk of unintended harm to the individual is outweighed [***1354] by the legislative justification for permitting the Commission to be the critic and protector of the information given it. It would be wrong not to assume that the Commission will responsibly scrutinize the reliability of sworn allegations that are to serve as the basis for further investigation and that it will be rigorously vigilant to protect the fair name of those brought into question.

In appraising the constitutionally permissive investigative procedure claimed [**1544] to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction is between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for. When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations. The functions of that institution and its constitutional prerogatives [*490] are rooted in long centuries of Anglo-American history. On the other hand, to require the introduction of adversary contests relevant to determination of individual guilt into what is in effect a legislative investigation is bound to thwart it by turning it into a serious digression from its purpose.

The cases in which this Court has recently considered claims to procedural rights in investigative inquiries alleged to deal unfairly with the reputation of individuals or to incriminate them, have made clear that the

fairness of their procedures is to be judged in light of the purpose of the inquiry, and, more particularly, whether its essential objective is official judgment on individuals under scrutiny. Such a case was *Greene v. McElroy, 360 U.S. 474.* There the inquiry was for the purpose of determining whether the security clearance of a particular person was to be revoked. A denial of clearance would shut him off from the opportunity of access to a wide field of employment. The Court concluded that serious constitutional questions were raised by denial of the rights to confront accusatory witnesses and to have access to unfavorable reports on the basis of which the very livelihood of an individual would be gravely jeopardized. Again, *Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123,* presented a contrasting situation to the one before us. The Government there sought through the Attorney General to designate organizations as "Communist," thus furnishing grounds on which to discharge their members from government employment. No notice was given of the charges against the organizations nor were they given an opportunity to establish the innocence of their aims and acts. It was well within the realities to say of what was under scrutiny in Joint Anti-Fascist Refugee *Committee* v. *McGrath* that "It would be blindness ... not to recognize that in the conditions of our time such designation drastically restricts [*491] the organizations, if it does not proscribe them." *341 U.S., at 161* (concurring opinion). And the procedure which was found constitutionally wanting in that case could be fairly characterized as action "to maim or decapitate, on the mere say-so of the Attorney General, an organization [***1355] to all outward-seeming engaged in lawful objectives ..." *Ibid.* Nothing like such characterization can remotely be made regarding the procedure for the proposed inquiry of the Commission on Civil Rights.

Contrariwise, decisions arising under the Due Process Clause of the Fourteenth Amendment strongly support the constitutionality of what is here challenged, where the purposes were as here truly investigatorial. Thus, *In re Groban, 352 U.S. 330,* sustained inquiry by the Ohio State Fire Marshal into the causes of a fire while excluding counsel of subpoenaed witnesses on whose premises the fire occurred. The Court so held even though the Fire Marshal had authority, after questioning a witness, to arrest him if he believed there was sufficient evidence to charge him with arson. The [**1545] guiding consideration was that, although suspects might be discovered, the essential purpose of the Fire Marshal's inquiry was not to adjudicate individual responsibility for the fire but to pursue a legislative policy of fire prevention through the discovery of the origins of fires. This decision was applied in *Anonymous No. 6 v. Baker, 360 U.S. 287,* which concerned "a state judicial Inquiry into alleged improper practices at the local bar" (at p. 288). Rejecting the claim based on the consideration that the inquiry might serve as a groundwork for the prosecution of witnesses called before it, the Court applied Groban because the inquiry was a general one and appellants were before it not as potential accused but "solely as witnesses." The proposed investigation of the Commission on Civil Rights is much less likely to result in prosecution of witnesses before it than were the investigations in *Groban* and [*492] *Baker.* Just as surely, there is not present in the cases now before us a drastic official judgment, as in *Greene* and *Joint Anti-Fascist Refugee Committee,* where the Court deemed it necessary to insure that full opportunity for defense be accorded to individuals who were the specific, adverse targets of the secret process.

Moreover, the limited, investigatorial scope of the challenged hearing is carefully hedged in with protections for the plaintiffs. They will have the right to be accompanied by counsel. The rules insure that they will be made aware of the subject of the hearings. They will have

the right to appeal to the Commission's power to subpoena additional witnesses. The rules significantly direct the Commission to abstain from public exposure by taking in executive session any evidence or testimony tending "to defame, degrade, or incriminate any person." A person so affected is given the right to read such evidence and to reply to it. These detailed provisions are obviously designed as safeguards against injury to persons who appear in public hearings before the Commission. The provision for screening defamatory and incriminatory testimony in order to keep it from the public may well be contrasted with the procedure in the *Joint Anti-Fascist* case, where the very purpose of the inquiry was to make an official judgment that certain organizations were "Communist." Such condemnation of an organization would of course taint its members. The rules of the Commission manifest a sense of its responsibility in carrying out the limited investigatorial task confided to it. It is not a constitutional requirement that the Commission be argumentatively turned into a forum for trial of the truth of particular allegations of denial of voting rights in [***1356] order thereby to invalidate its functioning. Such an inadmissible transformation of the Commission's function is in essence what is involved in the claims of the plaintiffs. Congress has entrusted the Commission with a very different [*493] role -- that of investigating and appraising general conditions and reporting them to Congress so as to inform the legislative judgment. Resort to a legislative commission as a vehicle for proposing well-founded legislation and recommending its passage to Congress has ample precedent.

Finally it should be noted that arguments directed either at the assumed novelty of employing the Commission in the area of legislative interest which led Congress to its establishment, or at the fact that the source of the Commission's procedures were those long used by Committees of Congress, are not particularly relevant. History may satisfy constitutionality, but constitutionality need not produce the title deeds of history. Mere age may establish due process, but due process does not preclude new ends of government or new means for achieving them. Since the Commission has, within its legislative framework, provided procedural safeguards appropriate to its proper function, claims [**1546] of unfairness offending due process fall. The proposed Shreveport hearing fully comports with the Constitution and the law. Accordingly I join the judgment of the Court in reversing the District Court.

[**1542] MR. JUSTICE HARLAN, whom MR. JUSTICE CLARK joins, concurring.

In joining the Court's opinion, as I do, I desire to add that in my view the principles established by *In re Groban, 352 U.S. 330,* and *Anonymous v. Baker, 360 U.S. 287,* are dispositive of the issues herein in the Commission's favor.

**DISSENTBY:**

DOUGLAS

**DISSENT:** [**1546contd] [EDITOR'S NOTE: The page number of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

With great deference to my Brethren I dissent from a reversal of these judgments.

The cause which the majority opinion serves is, on the surface, one which a person dedicated to constitutional [*494] principles could not question. At the bottom of this controversy is the right to vote protected by the Fifteenth Amendment. That Amendment

withholds power from either the States or the United States to deny or abridge the right to vote "on account of race, color, or previous condition of servitude." This right stands beyond the reach of government. Only voting qualifications that conform to the standards proscribed by the Fifteenth Amendment may be prescribed. See *Lassiter v. Northampton Election Board, 360 U.S. 45.* As stated in *Terry v. Adams, 345 U.S. 461, 468,* "The Amendment, the congressional enactment and the cases make explicit the rule against racial discrimination in the conduct of elections." By democratic values this right is fundamental, for the very existence of government dedicated to the concept "of the people, by the people, for the people," to use Lincoln's words, depends on the franchise.

Yet important as these civil rights are, it will not do to sacrifice other civil rights in order to protect them. We live and work under a Constitution. The temptation of many men of goodwill is to cut corners, take short cuts, and reach the desired end regardless of the means. Worthy as I think the ends are which the Civil Rights Commission advances in these cases, I think the [***1357] particular means used are unconstitutional.

The Commission, created by Congress, is a part of "the executive branch" of the Government, 71 Stat. 634, *42 U.S.C. § 1975* (a), whose members are appointed by the President and confirmed by the Senate. § 1975 (a). It is given broad powers of investigation with the view of making a report with "findings and recommendations" to the Congress. § 1975c. It is empowered, among other things, to

"investigate allegations in writing under oath or affirmation that certain citizens of the United States [*495] are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based." § 1975c (a) (1).

Complaints have been filed with the Commission charging respondents, who are registrars of voters in Louisiana, with depriving persons of their voting rights by reason of their color. If these charges are true and if the registrars acted willfully (see *Screws v. United States, 325 U.S. 91),* the registrars are criminally responsible under a federal statute which subjects to fine and imprisonment n1 anyone who willfully deprives a citizen of any right under the Constitution "by reason of his color, or race." n2 *18 U.S.C. § 242.*

n1 Civil suits for damages are also authorized. See *42 U.S.C. § 1983; Lane v. Wilson, 307 U.S. 268.*

n2 The section reads in relevant part as follows:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . by reason of his color, or race . . . shall be fined not more than $ 1,000 or imprisoned not more than one year, or both."

The investigation and hearing by the Commission are therefore necessarily aimed at determining if this criminal [**1547] law has been violated. The serious and incriminating nature of the charge and the disclosure of facts concerning it are recognized by the Congress, for the Act requires certain protective procedures to be adopted where defamatory, degrading, or incriminating evidence may be adduced.

"If the Commission determines that evidence or testimony at any hearing may tend

to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford [*496] such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses." *42 U.S.C. § 1975a* (e).

Yet these safeguards, given as a matter of grace, do not in my judgment dispose of the constitutional difficulty. First, it is the Commission's judgment, not the suspect's, that determines whether the hearing shall be secret or public. Thus this procedure has one of the evils protested against in *In re Groban, 352 U.S. 330, 337, 348-353* (dissenting opinion). The secrecy of the inquisition only underlines its inherent vices: "Secret inquisitions are dangerous things justly feared by free men everywhere. They are the breeding place for arbitrary misuse of official power. They are often the beginning of tyranny as well as indispensable instruments for its survival. Modern as well as ancient history bears witness that both innocent [***1358] and guilty have been seized by officers of the sate and whisked away for secret interrogation or worse until the groundwork has been securely laid for their inevitable conviction." *Id., at 352-353.* As said in dissent in *Anonymous v. Baker, 360 U.S. 287, 299,* "secretly compelled testimony does not lose its highly dangerous potentialities merely because" it is taken in preliminary proceedings. Second, the procedure seems to me patently unconstitutional whether the hearing is public or secret. Under the Commission's rules the accused is deprived of the right to notice of the charges against him and the opportunity of cross-examination. This statutory provision, fashioned to protect witnesses as such rather than a prospective defendant, permits the Commission to exclude the accused entirely from the hearing and deny him the opportunity even to observe the testimony of his accusers. And even if the Commission were inclined in a particular case to protect the accused from the opprobrium likely to flow from the testimony of [*497] individual witnesses against him by holding secret sessions, this would be little comfort after the Commission's findings, based on such untested evidence, were publicized across the Nation.

I assume that no court would be justified in enjoining a Congressional Committee composed of Senators or Congressmen that engaged in this kind of conduct. This is not that kind of a committee. Moreover, even if it were and if private rights were infringed by reason of the Committee's violations of the Constitution, there are circumstances when redress can be had in the courts. *Kilbourn v. Thompson, 103 U.S. 168.* Cf. *Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102; Opinion of the Justices, 96 N.H. 530, 73 A. 2d 433.* The judiciary also becomes implicated when the Congress asks the courts to back up what its Committees have done; or when a victim of an investigation asks relief from punishment [**1548] imposed on him. Then the procedural safeguards of the Bill of Rights come into full play. See *Watkins v. United States, 354 U.S. 178.*

The Civil Rights Commission, however, is not a Congressional Committee of Senators or Congressmen; nor is it an arm of Congress. It is an arm of the Executive. There is, in my view, only one way the Chief Executive may move against a person accused of a crime and deny him the right of confrontation and cross-examination and that is by the grand jury.

The grand jury is the accusatory body in federal law as provided by the Fifth Amendment. The essence of the institution of the grand jury was stated by 1 Stephen, History of Criminal Law of England, 252: "The body of the country are the accusers." Thomas Erskine stated the matter accurately and eloquently in *Jones v. Shipley , 21 How. St. Tr. 847, 977.*

"[It] is unnecessary to remind your lordships, that, in a civil case, the party who conceives

himself [*498] aggrieved, states his complaint to the court, -- avails himself at his own pleasure of its process, -- compels an answer from the defendant by its authority, -- or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt, without any interposition of a jury. But in criminal cases it is otherwise; the court has no cognizance of them, without leave from the people forming a grand inquest. If a man were to commit a capital offence in the face [***1359] of all the judges of England, their united authority could not put him upon his trial: -- they could file no complaint against him, even upon the records of the supreme criminal court, but could only commit him for safe custody, which is equally competent to every common justice of the peace: - the grand jury alone could arraign him, and in their discretion might likewise finally discharge him, by throwing out the bill, with the names of all your lordships as witnesses on the back of it. If it shall be said, that this exclusive power of the grand jury does not extend to lesser misdemeanors, which may be prosecuted by information; I answer, that for that very reason it becomes doubly necessary to preserve the power of the other jury which is left."

This idea, though uttered in 1783, is modern and relevant here. The grand jury brings suspects before neighbors, not strangers. Just recently in *Stirone v. United States, 361 U.S. 212, 218,* we said, "The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge."

This Commission has no such guarantee of fairness. Its members are not drawn from the neighborhood. The [*499] members cannot be as independent as grand juries because they meet not for one occasion only; they do a continuing job for the executive and, if history is a guide, tend to acquire a vested interest in that role.

The grand jury, adopted as a safeguard against "hasty, malicious, and oppressive" action by the Federal Government, *Ex parte Bain, 121 U.S. 1, 12,* stands as an important safeguard to the citizen against open and public accusations of crime. Today the grand jury may act on its own volition, though originally specific charges by private prosecutors were the basis of its action. *Hale v. Henkel, 201 U.S. 43, 59-60.* It has broad investigational powers to look into what may be offensive [**1549] against federal criminal law. *United States v. Johnson, 319 U.S. 503, 510.* An indictment returned by a grand jury may not be challenged because it rests wholly on hearsay. *Costello v. United States, 350 U.S. 359, 361-362.* An accused is not entitled to a hearing before a grand jury, nor to present evidence, nor to be represented by counsel; and a grand jury may act secretly -- a procedure normally abhorrent to due process. In this country as in England of old, the grand jury is convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor. *Costello v. United States, supra, at 362.*

Grand juries have their defects. They do not always return a true bill, for while the prejudices of the community may radiate through them, they also have the saving quality of being familiar with the people involved. They are the only accusatory body in the Federal Government that is recognized by the Constitution. I would allow no other engine of government, either executive or legislative, to take their place -- at least when the right of confrontation and cross-examination are denied the accused as is done in these cases.

[*500] The might and power of the Federal Government have no equal. When its guns are leveled at a citizen [***1360] on charges that he committed a federal crime, it is for me no answer to say that the only purpose is

to report his activities to the President and Congress, not to turn him over to the District Attorney for prosecution. Our Constitution was drawn on the theory that there are certain things government may not do to the citizen and that there are other things that may be done only in a specific manner. The relationship of the Federal Government to a man charged with crime is carefully defined. Its power may be marshalled against him, but only in a defined way. When we allow this substitute method, we make an innovation that does not comport with that due process which the Fifth Amendment requires of the Federal Government. When the Federal Government prepares to inquire into charges that a person has violated federal law, the Fifth Amendment tells us how it can proceed.

The Civil Rights Commission, it is true, returns no indictment. Yet in a real sense the hearings on charges that a registrar has committed a federal offense are a trial. Moreover, these hearings before the Commission may be televised or broadcast on the radio. n3 In our day we have seen Congressional Committees probing into alleged criminal conduct of witnesses appearing on the television screen. This is in reality a trial in which the [*501] whole Nation sits as a jury. Their verdict does not send men to prison. But it often condemns men or produces evidence to convict and even saturates the Nation with prejudice against an accused so that a fair trial may be impossible. As stated in *37 A.B.A.J. 392 (1951)*, "If several million television viewers see and hear a politician, a businessman or a movie actor subjected to searching interrogation, without ever having an opportunity to cross-examine his accusers or offer evidence in his own support, that man will stand convicted, or [**1550] at least seriously compromised, in the public mind, whatever the later formal findings may be." The use of this procedure puts in jeopardy our traditional concept of the way men should be tried and replaces it with "a new concept of guilt based on inquisitorial devices." Note, *26 Temp. L.Q. 70, 73.*

n3 The Rules of the Commission by Subdivision (k) provide:

"Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearings if he objects on the ground of distraction, harassment, or physical handicap."

Yet whether the hearing is televised or not it will have all the evils of a legislative trial. "The legislative trial," wrote Alan Barth in Government by Investigation (1955) p. 81, "is a device for condemning men without the formalities of due process." And he went on to say:

"The legislative trial serves three distinct though related purposes: (1) it can be used to punish conduct which is not criminal; (2) it can be used to punish supposedly criminal conduct in the absence of evidence requisite to conviction in a court of law; and (3) it can be used to drive or trap persons suspected of 'disloyalty' into committing some collateral crime such as perjury or contempt of Congress, which can then be subjected to punishment through a judicial proceeding. 'It is hard to get them for their criminal activities in connection with espionage, but a way has been found,' Senator McCarthy once remarked. 'We are getting them for perjury and putting [***1361] some of the worst of them away. For that [*502] reason I hope every witness who comes here is put under oath and his testimony is gone

over with a fine-tooth comb, and if we cannot convict some of them for their disloyal activities, perhaps we can convict some of them for perjury.' That they may have been guilty of no violation of law in the first place seems of no concern to the Senator." *Id., at 83.* And see Telford Taylor, Grand Inquest (1955).

Barth wrote of hearings in the so-called loyalty cases. But the reasons apply to any hearing where a person's job or liberty or reputation is at stake. Barth wrote of hearings held by Congressional Committees. Yet the evil is compounded where the "legislative trial" has become a "Commission trial." And while I assume that a court would not enjoin the typical Congressional Committee, it is duty bound to keep commissions within limits, when its jurisdiction is properly invoked.

The right to know the claims asserted against one and to contest them -- to be heard -- to conduct a cross-examination -- these are all implicit in our concept of "a full and fair hearing" before any administrative agency, as the Court in *Morgan v. United States, 304 U.S. 1, 18,* emphasized. We spoke there in the context of civil litigation where property was at stake. Here the need for all the protective devices of a fair hearing is greater. For one's job and perhaps his liberty are hinged on these hearings.

We spoke in the tradition of the Morgan case only recently in *Greene v. McElroy, 360 U.S. 474, 496-497.*

"Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so* [*503] *that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient [**1551] roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, ... but also in all types of cases where administrative and regulatory actions were under scrutiny." (Italics added.)

We spoke there in a context where men were being deprived of their jobs as a result of investigations into their loyalty. Certainly no less is required if hearings are to be held on charges that a person has violated a federal law.

Respondents ask no more than the right to know the charges, to be confronted with the accuser, and to cross-examine him. Absent these rights, they ask for an injunction. In the *Greene* case we said these rights were available "where governmental action seriously injures an individual." *360 U.S., at 496.* Injury is plain and obvious here -- injury [***1362] of a nature far more serious than merely losing one's job, as was the situation in the Greene case. If the hearings are to be without the safeguards which due process requires of all trials - civil and criminal -- there is only one way I know by which the Federal Government may proceed and that is by grand jury. If these trials before the Commission are to be held on [*504] charges that these respondents are criminals, the least we can do is to allow them to know what they are being tried for, and to confront their accusers and to cross-examine them. n4 This protection would be extended to them in any preliminary hearing, even in one before a United States Commissioner. n5 Confrontation and cross-examination are so

basic to our concept of due process ( *Peters v. Hobby, 349 U.S. 331, 351-352* (concurring opinion) ) that no proceeding by an administrative agency is a fair one that denies these rights.

n4 Cf. Frankfurther, Hands Off the Investigations, New Republic, May 21, 1924, p. 329, at 331: "It must be remembered that our rules of evidence are but tools for ascertaining the truth, and that these tools vary with the nature of the issues and the nature of the tribunal seeking facts. Specifically, the system of rules of evidence used in trials before juries 'are mainly aimed at guarding the jury from the over-weening effect of certain kinds of evidence.' That system, as pointed out by Wigmore, 'is not applicable by historical precedent, or by sound practical policy' to 'inquiries of fact determinable by administrative tribunals.' Still less is it applicable to inquiries by congressional committees. Of course the essential decencies must be observed, namely opportunity for cross-examination must be afforded to those who are investigated or to those representing issues under investigation."

n5 Rule 5 (b), Rules of Criminal Procedure, provides that the defendant shall be informed of the complaint against him and of his right to retain counsel. Rule 5 (c) expressly states, "The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf."

References are made to federal statutes governing numerous administrative agencies such as the Federal Trade Commission and the Securities and Exchange Commission; and the inference is that what is done in this case can be done there. This comes as a surprise to one who for some years was engaged in those administrative investigations. No effort was ever made, so far as I am aware, to compel a person, charged with violating a federal law, to run the gantlet of a hearing over his objection. [*505] No objection based either on the ground now advanced nor on the Fifth Amendment was, so far as I know, ever overruled. Investigations were made; and they were searching. Such evidence of law violations as was obtained was turned over to the Department of Justice. But never before, I believe, has a federal executive agency [**1552] attempted, over the objections of an accused, to force him through a hearing to determine whether he has violated a federal law. If it did, the action was lawless and courts should have granted relief.

What we do today is to allow under the head of due process a fragmentation of proceedings against accused people that seems to me to be foreign to our system. No indictment is returned, no commitment to jail is made, no formal criminal charges are made. Hence the procedure is condoned as violating no constitutional guarantee. Yet what is done is another short cut used more and more these days to "try" men in ways not envisaged by the Constitution. The result is as damaging as summoning before committees men who it is known will invoke the Fifth Amendment and pillorying [***1363] them for asserting their constitutional rights. This case -- like the others -- is a device to expose people as suspects or criminals. The concept of due process which permits the invention and use of prosecutorial devices not included in the Constitution makes due process reflect the subjective or even whimsical notions of a majority of this Court as from time to time constituted. Due process under the prevailing doctrine is what the judges say it is; and it differs from judge to judge, from court to court. This notion of due process makes it a tool of

the activists who respond to their own visceral reactions in deciding what is fair, decent, or reasonable. This elastic concept of due process is described in the concurring opinion as follows:

"Whether the scheme satisfies those strivings for justice which due process guarantees, must be judged in [*506] the light of reason drawn from the considerations of fairness that reflect our traditions of legal and political thought, duly related to the public interest Congress sought to meet by this legislation as against the hazards or hardship to the individual that the Commission procedure would entail."

When we turn to the cases, personal preference, not reason, seems, however, to be controlling.

Illustrative are the First Amendment protection given to the activities of a classroom teacher by the Due Process Clause of the Fourteenth Amendment in *Sweezy v. New Hampshire, 354 U.S. 234, 255, 261-263* (concurring opinion), but denied to the leader of an organization holding discussion groups at a summer camp in *Uphaus v. Wyman, 360 U.S. 72;* the decisions that due process was violated by the use of evidence obtained by the forceful use of a stomach pump in *Rochin v. California, 342 U.S. 165,* but not when evidence was used which was obtained by taking the blood of an unconscious prisoner. *Breithaupt v. Abram, 352 U.S. 432.*

It is said in defense of this chameleon-like due process that it is not "an exercise of whim or will," that it is "founded on something much deeper and more justifiable than personal preference. As far as it lies within human limitations, it must be an impersonal judgment. It must rest on fundamental presuppositions rooted in history to which widespread acceptance may fairly be attributed." *Sweezy v. New Hampshire, supra, at 267* (concurring opinion). Yet one who tries to rationalize the cases on cold logic or reason fails. The answer turns on the personal predilections of the judge; and the louder the denial the more evident it is that emotion rather than reason dictates the answer. This is a serious price to pay for adopting a free-wheeling concept of due process, rather than confining it to the procedures and devices [*507] enumerated in the Constitution itself. As said in *Adamson v. California, 332 U.S. 46, 68, 89* (dissenting opinion): "In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart those purposes. I fear to see the consequences of the Court's practice of substituting its own concepts of decency and fundamental justice for the language of [***1364] the Bill of Rights as its point of departure in interpreting and enforcing that Bill of Rights."

That was written concerning the meaning of the Due Process Clause of the Fourteenth Amendment. But it has equal vitality when applied to the Due Process Clause of the Fifth Amendment with which we are now concerned.

I think due process is described in the Constitution and limited and circumscribed by it. The Constitution is explicit as respects the permissible accusatory process that the Executive can employ against the citizen. Men of goodwill, not evil ones only, invent, under feelings of urgency, new and different procedures that have an awful effect on the citizen. The new accusatory procedure survives if a transient majority of the Court are persuaded that the device is fair or decent. My view of the Constitution confines judges -- as well as the lawmakers and the Executive -- to the procedures expressed in the Constitution.

We look to the Constitution -- not to the personal predilections of the judges -- to see what is permissible. Since summoning an accused by the Government to explain or

justify his conduct, that is charged as a crime, may be done only in one way, I would require a constitutional amendment before it can be done in a different way.

[*508] The alternate path which we take today leads to trial of separate essential parts of criminal prosecutions by commissions, by executive agencies, by legislative committees. Farming out pieces of trials to investigative agencies is fragmentizing the kind of trial the Constitution authorizes. It prejudices the ultimate trial itself; and it puts in the hands of officials the awesome power which the Framers entrusted only to judges, grand jurors and petit jurors drawn from the community where the accused lives. It leads to government by inquisition.

The Civil Rights Commission can hold all the hearings it desires; it can adduce testimony from as many people as it likes; it can search the records and archives for such information it needs to make an informed report to Congress. See *United States v. Morton Salt Co., 338 U.S. 632; Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186.* But when it summons a person, accused under affidavit of having violated the federal election law, to see if the charge is true, it acts in lieu either of a grand jury or of a committing magistrate. The sifting of criminal charges against people is for the grand jury or for judges or magistrates and for them alone under our Constitution. In my view no other accusatory body can be used that withholds the rights of confrontation and crossexamination from those accused of federal crimes.

I would affirm these judgments.

**REFERENCES:** Return To Full Text Opinion

Annotation References:

1. Administrative decision or finding based on evidence secured outside of hearing and without presence of interested party or counsel, 99 L ed 460, *18 ALR2d 552.*

2. Construction and application of Administrative Procedure Act, 94 L ed 631, 95 L ed 473, 97 L ed 884.

3. Race discrimination affecting right to vote, 94 L ed 1141, 100 L ed 491, 3 L ed 2d 1560.

## C. *United States of America v. Joseph O'Neill and Frank A. Scafidi,* 619 F.2d 222; 1980 U.S. App

LEXSEE 619 F.2D 222

**UNITED STATES OF AMERICA, Appellant v. JOSEPH F. O'NEILL and FRANK A. SCAFIDI, Appellees**

**No. 79-1665**

**UNITED STATES COURT OF APPEALS, THIRD CIRCUIT**

***619 F.2d 222; 1980 U.S. App. LEXIS 19667; 6 Fed. R. Evid. Serv. (Callaghan) 643***

**December 11, 1979, Argued**
**March 13, 1980, Decided**

**PRIOR HISTORY:** [**1]

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (D.C. Miscellaneous No. 79-0090)

**LexisNexis (TM) HEADNOTES - Core Concepts:**

**COUNSEL:**

Peter F. Vaira, U. S. Atty., Walter S. Batty, Jr., Asst. U. S. Atty., Chief, Appellate Division, Theodore A. McKee (Argued), Asst. U. S. Atty., Philadelphia, Pa., for appellant.

Sheldon L. Albert, City Sol., James M. Penny, Jr., Deputy City Sol., Ralph J. Teti (Argued), Asst. City Sol., Philadelphia, Pa., for appellees.

**JUDGES:**

Before ROSENN, MARIS and SLOVITER, Circuit Judges.

**OPINIONBY:**

SLOVITER

**OPINION:**

[*224]

OPINION OF THE COURT

I.

The United States has appealed from the district court's denial of the Government's motion for enforcement of administrative subpoenas issued by the United States Civil Rights Commission upon Joseph O'Neill, then Commissioner of the Philadelphia Police Department, and Frank A. Scafidi, then Chief Inspector, Internal Affairs Bureau of the Philadelphia Police Department. The portions of the subpoenas at issue here requested the production of documents and records by the City of Philadelphia relating to investigations into reports of alleged brutality on the part of named police officers. The district court denied enforcement [**2] of the subpoenas on the basis of executive or "governmental" privilege.

II.

Facts

On February 6, 1979, the United States Commission on Civil Rights (the "Commission") began a series of public hearings in Philadelphia as part of the Commission's ongoing inquiry concerning denials of equal protection of the law under the Constitution and in the administration of justice. The hearings were part of a broader national inquiry by the Commission into the possible need to revise federal legislation to deal more effectively with the problem of police abuse. The Commission was created by Congress in 1957 and empowered to investigate, study, and collect information concerning denials of constitutional rights and equal administration of justice. Civil Rights Act of 1957, Pub.L.No.85-315, 71 Stat. 634. The Commission has the authority to hold hearings and issue subpoenas for the attendance of witnesses and for the production of written material. *42 U.S.C. § 1975d*(f). If any person refuses to obey the subpoenas, the Commission may apply to a United States district court for an enforcement order. *42 U.S.C. § 1975d*(g).

Prior to the scheduled February 6 hearings in Philadelphia, the Commission [**3] served subpoenas upon Police Commissioner O'Neill and Chief Inspector Scafidi. The subpoenas called for the production of extensive documents relating to training, investigation and discipline in the Philadelphia Police Department. O'Neill and Scafidi supplied most of the requested material but refused to comply with Paragraph IV of the O'Neill subpoena and Paragraphs 1 through 7 of the Scafidi subpoena calling for the production of material on the Police Department's response to allegations of police brutality on the part of thirty-one named officers. Paragraph IV of the O'Neill subpoena requested, inter alia:

> All records, documents, reports, notes, of any description whatsoever from any [*225] source pertaining to the investigation by the Homicide Division, the Internal Affairs Bureau, or any other part of the Philadelphia Police Department into any actions which resulted in allegations of excessive, inappropriate, deadly or illegal use of force by the following current or former police officers listed on pages 3 and 4.

The section of the Scafidi subpoena to which the City objected corresponded to Paragraph IV of the O'Neill subpoena.

Following the City's refusal [**4] to supply the requested information, the Government filed a motion to enforce the subpoena pursuant to *42 U.S.C. § 1975d*(g) giving the district courts jurisdiction to require the production of "pertinent, relevant and non-privileged" subpoenaed material. Following several conferences with the district court at which some additional material was produced by the City, the Government's motion to enforce was argued on February 16, 1979. n1 The court denied the motion to enforce in an opinion delivered from the bench. The Government's subsequent motion to reconsider was also denied.

> n1. The number of officers whose investigating files are at issue has been reduced from 31 to 22. The City brief notes that there were no files as to some of the named officers, and the City withdrew its objection as to disclosure of certain other files.

III.

Manner of Assertion of Privilege

The City's refusal to comply with paragraph 4 of the subpoena was asserted orally by the City Solicitor when he appeared together with and [**5] on behalf of Commissioner O'Neill and Inspector Scafidi at the Commission's executive session on February 6, 1979, the date listed in the subpoena for compliance. At that time the City claimed compliance would violate the officers' fifth amendment privilege against self-incrimination, the attorney-client and work product privileges, and the police officers' due process rights, and that the nature of much of the material sought would tend to degrade and defame individual officers.

The City also claimed in oral argument before the district court that the police officers named in the subpoena were the subject of 13 criminal actions, 30 civil actions, and potential future indictments stemming from federal and state grand jury investigations. The City claimed that release of the subpoenaed information would "materially interfere with the City's ability to properly defend outstanding lawsuits versus the City and versus the individual officers." The defense of "governmental" privilege was alluded to in the City's legal memorandum submitted to the district court. When pressed on the point during oral argument the City Solicitor stated that he would "claim executive privilege, too . . . ." [**6]

We find unsatisfactory the manner in which the City has asserted its claim of privilege. In the first place, it was invoked orally, although there was ample opportunity to prepare a written formal claim of privilege. In the second place, it was not invoked by the department head, but by the attorney for the City. There was no affidavit, and no indication that the privilege was being invoked by the responsible public official on the representation that he had personally examined the documents and determined nondisclosure was required. In the third place, it was a broadside invocation of privilege, which failed to designate with particularity the specific documents or file to which the claim of privilege applied.

When a request for relevant documents or information is made, a claim of privilege should be interposed judiciously and not casually. Under ordinary circumstances, objection to production of documents on the ground of privilege should be made in writing. The same rationale for requiring that a party objecting to a request for production of documents under Fed.R.Civ.P. 34(b) must submit a written response specifying the objection to each category applies equally to the response [**7] to a subpoena duces tecum. This gives each party the opportunity to analyze the request and the corresponding objection, and gives the court a fuller record on which to [*226] base its ruling. It also provides some assurance that the party asserting the privilege has directed his or her attention to the scope of the claim being asserted.

The appropriate manner in which privilege should be invoked was set forth by the Supreme Court in *United States v. Reynolds, 345 U.S. 1, 7-8, 73 S. Ct. 528, 532, 97 L. Ed. 727 (1953),* where the Court said:

> There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. The court itself must determine whether the circumstances are appropriate for a claim of privilege . . . .

Although the Court in that case was dealing with the claim of privilege for state and military secrets, "its prerequisites for formal invocation of the privilege have been uniformly applied irrespective of the particular kind of executive claim advanced." *Carter v. Carlson, 56 F.R.D. 9, 10 (D.D.C.1972).*

In *Smith v. Federal Trade Commission, 403 F. Supp. 1000* [**8] *(D.Del.1975),* Judge Schwartz held that the FTC improperly invoked executive privilege with respect to certain documents, noting that to support a claim of executive privilege at least three requirements must be satisfied. The head of the agency claiming the privilege must personally review the material, there must be " "a specific designation and description of the documents' claimed to be privileged," and there must be "precise and certain reasons for preserving" the confidentiality of the communications. Usually such claims must be raised by affidavit. *Id. at 1016;* see also *Black v. Sheraton Corp. of America, 184 U.S.App.D.C. 46, 57-58, 564 F.2d 531, 542-43 (D.C.Cir.1977); Pierson v. United States, 428 F. Supp. 384, 392-96 (D.Del.1977); Center on Corporate Responsibility, Inc. v. Shultz, 368 F. Supp. 863, 872-73 (D.D.C.1973)* (claim of executive privilege involving Nixon tape rejected because not invoked personally by President who had custody of allegedly privileged matters).

The City contends that the privilege was properly invoked in this case because Commissioner O'Neill and Inspector Scafidi accompanied the City Solicitor when the City Solicitor invoked the privilege on their [**9] behalf before the Commission. Although the City Solicitor's legal opinion is binding on the department head, Philadelphia Home Rule Charter 4-400, this does not operate to substitute the City Solicitor's legal judgment for the departmental responsibility of the city official. It has been suggested that it is inappropriate for the privilege to be invoked by attorneys instead of by the department head. See *Thill Securities Corp. v. New York Stock Exchange, 57 F.R.D. 133, 138 (E.D.Wis.1972); Carter v. Carlson, 56 F.R.D. at 11;* but see *Frankenhauser v. Rizzo, 59 F.R.D. 339, 342 n.6 (E.D.Pa.1973).* We need not decide if this is always the case, but there was no indication here that the department heads made the type of personal careful examination which must precede invocation of the privilege.

It is patent from the record in this case that wholesale claims of privilege were made by the City without discrimination as to the grounds for the claims and their applicability to the documents requested. For example, the claim of the Fifth Amendment privilege was interposed, although such a claim could not conceivably apply to many of the documents requested such as all citizen complaints involving [**10] the named officers, the names of all individuals charged with the responsibility of investigating any complaint against the specified police officers, and records of administrative measures taken by the Philadelphia Police Department in investigating and disposing of any complaints against the named officers. Furthermore, the Fifth Amendment privilege is personal to the person invoking it, *Rogers v. United States, 340 U.S. 367, 371, 71 S. Ct. 438, 440, 95 L. Ed. 344 (1951); Bowman v. United States, 350 F.2d 913, 915-16 (9th Cir. 1965),* and there is no indication that either Commissioner O'Neill or Inspector Scafidi was claiming the privilege of self-incrimination on his own behalf. Another example of the City's summary assertion of privilege is its claim of work product "privilege," in actuality not a privilege [*227] at all but a protection of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of the party concerning the litigation. *Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947); United States v. Amerada Hess Corp., 619 F.2d 980, at 987 (3d Cir.1980).* It is clearly inappropriate to invoke the work product [**11] protection for documents which were not the product of any attorney preparation, such as complaints filed by citizens, records of action taken by the Police Department in disposing of those complaints, and, indeed, any records of the Department's own investigations into such complaints.

The indiscriminate claim of privilege may in itself be sufficient reason to deny it. The court when faced with such a claim cannot make a just or reasonable determination of its validity. Even when the privilege has been asserted by the President of the United States, the Supreme Court has

rejected it when it depended "solely on the broad, undifferentiated claim of public interest in the confidentiality of . . . conversations" and has refused to extend deference to a President's "generalized interest in confidentiality." *United States v. Nixon, 418 U.S. 683, 706, 711, 94 S. Ct. 3090, 3107, 41 L. Ed. 2d 1039 (1974)* (emphasis added). See also *Senate Select Committee on Presidential Campaign Activities v. Nixon, 370 F. Supp. 521* (D.D.C.), aff'd, *162 U.S.App.D.C. 183, 498 F.2d 725 (D.C.Cir.1974)* (President's assertion of executive privilege rejected because President did not permit in camera inspection [**12] or provide particularized description of applicability of privilege). Accordingly, the district court erred in accepting the City's claim of privilege in the form and manner in which it was interposed in this matter.

IV.

Commission's Assertion of Need

If a valid claim of privilege is properly invoked, the party who seeks the information must show the need for it so that the court can "balance on one hand the policies which give rise to the privilege and their applicability to the facts at hand against the need for the evidence sought to be obtained in the case at hand." *Riley v. City of Chester, 612 F.2d 708 at 716 (3d Cir. 1979).*

The functions and purposes of the Commission were summarized in the report of the House of Representatives recommending passage of legislation to extend the life of the Commission to at least 1983 and broaden its scope to cover discrimination against the handicapped. The report stated:

> The Commission investigates complaints alleging the denial of the right to vote by reasons of race, color, religion, sex or national origin, or by reason of fraudulent practices. It studies and collects information concerning legal developments and also appraises Federal [**13] laws and policies with respect to the denial of equal protection of the laws which fall within its jurisdiction or in the administration of justice. The Commission further serves as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex or national origin.

House Comm. on the Judiciary, Civil Rights Commission Act of 1978, H.R.Rep.No.95-1140, 95th Cong., 2d Sess. 2-3, reprinted in (1978) U.S.Code Cong. & Admin.News, pp. 2639, 2641.

According to the Government's Motion for Reconsideration filed in the district court, the Government was prepared to introduce evidence to show that the purpose of the Commission's hearings in Philadelphia was to investigate allegations of police misconduct, ascertain the nature of that misconduct, identify formal department policies and procedures relating to police conduct and discipline, identify the officials in agencies legally responsible for investigating and resolving allegations of police misconduct, and evaluate the availability and effectiveness of existing systems of accountability, both internal and external.

[*228] The Commission then planned to determine [**14] whether its findings reflected discrimination or a denial of equal protection under the Constitution, appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection particularly as such relate to police practices, and disseminate pertinent and appropriate information. The Commission planned that its inquiry would include a case study of those particular incidents and/or officers which have received extraordinary notoriety so as to determine the effectiveness and the manner in which the internal complaint procedures have operated or failed to operate. The

Commission asserts this case study is important in allowing the Commission to determine whether certain types of complaints or complaints about certain police officers are handled in a manner which is inconsistent with the stated police policies or with the manner in which other complaints are handled.

In the absence of any evidence to the contrary, the requested material is presumptively relevant and the Commission is presumptively entitled to enforcement of the subpoenas. Courts traditionally give wide latitude in determining relevance in the context of an administrative subpoena. [**15] See *United States v. Morton Salt Co., 338 U.S. 632, 652, 70 S. Ct. 357, 368, 94 L. Ed. 401 (1950); Endicott Johnson Corporation v. Perkins, 317 U.S. 501, 507-509, 63 S. Ct. 339, 342-343, 87 L. Ed. 424 (1943); Federal Trade Commission v. Texaco, Inc., 180 U.S.App.D.C. 390, 555 F.2d 862* (D.C.Cir.), cert. denied, *431 U.S. 974, 97 S. Ct. 2939, 53 L. Ed. 2d 1072 (1977).* In Perkins, the Court stated that administrative subpoenas must be enforced if the documents sought could be pertinent to a legitimate agency inquiry. The Court found:

> The evidence sought by the subpoena was not plainly incompetent or irrelevant to any lawful purpose of the (agency) . . . and it was the duty of the District Court to order its production for the (agency's) consideration.

*317 U.S. at 509, 63 S. Ct. at 343.*

It appears the trial court gave too little weight to the needs of the Commission, holding its need was less important than that of a private litigant. The background for the formation of the Commission and the significance of its investigation were fully considered in *Hannah v. Larche, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960),* where the Court stressed the legitimacy of its function [**16] as an investigative and fact-finding body. Thus, the relevance and need for the information sought in this case were established, and the inquiry must shift to the nature of protection from discovery claimed by the City.

V.

City's Claim of Privilege

In refusing to grant the Government's motion to enforce, the district court held the City had a qualified executive or governmental privilege not to disclose information with regard to matters subject to ongoing criminal investigations and pending criminal and civil litigation at a state and federal level.

An exhaustive consideration of the parameters of executive privilege is not required here because as discussed previously, the precise claims of the City have not been fully developed. It suffices to note that not only the proper designation of the privilege but its origin and scope have been the subject of disagreement. n2 It is accepted that executive privilege comprehends military and state secrets, *United States v. Reynolds, 345 U.S. 1, 73 S. Ct. 528, 97 L. Ed. 727 (1953),* and the deliberative process of high executive officials. *United States v.* [*229] *Nixon, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).* There [**17] is also a privilege or protection against disclosure of certain government documents which are made confidential by statute. See, e. g., Federal Aviation Act, *49 U.S.C. § 1441*(e) (1976), Social Security Act, *42 U.S.C. § 1306*(a) (1976). None of these aspects of executive privilege are applicable here.

n2. It has been suggested that the appropriate terminology would divide the privilege claim into a state secret privilege and an official information privilege. Comment, Discovery of Government Documents and the Official Information Privilege, *76 Colum.L.Rev. 142 (1976).* The statements in *United States v. Nixon, 418 U.S. 683, 708, 94 S. Ct. 3090, 3107, 41 L. Ed. 2d 1039 (1974)* that the executive privilege claimed by the President is "inextricably rooted in the separation of powers" has been challenged in Berger, The Incarnation of Executive Privilege, *22 U.C.L.A.L.Rev. 4 (1974).*

Another basis on which the Government can withhold information from discovery is usually referred to as the informer's privilege, [**18] "in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." *Roviaro v. United States, 353 U.S. 53, 59, 77 S. Ct. 623, 627, 1 L. Ed. 2d 639 (1957).* The reason given by the Court for such a privilege is instructive:

> The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.
>
> The scope of the privilege is limited by its underlying purpose. Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. Likewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable.

*Id. at 59-60, 77 S. Ct. at 627* (footnotes omitted).

The City contends and the district court agreed that material relating to ongoing [**19] civil and criminal investigations were the subject of a privilege against disclosure. We know of no Supreme Court case which provides support for such a broad amorphous Government privilege. One of the proposed Rules of Evidence, Rule 509, would have protected, in addition to "secrets of state", "official information" defined as

> information within the custody or control of a department or agency of the government the disclosure of which is shown to be contrary to the public interest and which consists of: (A) intragovernmental opinions or recommendations submitted for consideration in the performance of decisional or policymaking functions, or (B) subject to the provisions of *18 U.S.C. § 3500,* investigatory files compiled for law enforcement purposes and not otherwise available, or (C) information within the custody or control of a governmental department or agency whether initiated within the department or agency or acquired by it in its exercise of its official responsibilities and not otherwise available to the public pursuant to *5 U.S.C. § 552.*

See H.R. 5463, 93d Cong., 1st Sess. (1973). The proposal elicited adverse reaction. The American Bar Association's Special [**20] Committee on Federal Practice reported that "(t)he Committee urges that Rule 509 be reviewed and reconsidered to make it consistent with the Freedom of Information Act with the view of placing the government in the same position as any other

percipient witness insofar as the imposition of a duty to disclose relevant evidence is claimed." Rules of Evidence (Supplement), Hearings before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 93d Cong., 1st Sess. 339, Ser. No. 2 (1973). A statement on behalf of the Association of American Publishers, Inc. was particularly critical of Rule 509 and contained the following comment:

> With respect to other official information, we question whether such a category for privilege was ever before in existence. Its broadness and lack of compelling need for non-disclosure is indicated by the Rule itself, which allows any attorney representing the government to assert the privilege. The mere requirement that the disclosure be shown to be contrary to the public interest does not begin to bring it within the realm of genuine national security requirements. Indeed, [*230] it could be argued that any information which might be embarrassing [**21] to government officials could be contrary to the public interest by weakening the public's confidence in its officials. Yet, that is exactly the kind of information to which the public, let alone any parties in litigation with the government, is entitled.

Id. at 24.

Congress refused to accept the privilege formulations contained in the proposed rules of evidence and substituted instead Rule 501 which requires that in civil actions as to which state law does not supply the rule of decision, "the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience." Fed.R.Evid. 501.

Despite language in some lower court opinions which appears to accept the concept of general confidentiality of investigatory files, closer analysis shows that most of the cases relied upon by the district court were really instances dealing with the applicability of one of the aspects of Executive Privilege heretofore acknowledged by the Supreme Court. n3 Thus, for example, in *United States ex rel. Jackson v. Petrilli, 63 F.R.D.* [**22] *152 (N.D.Ill.1974),* and *Gaison v. Scott, 59 F.R.D. 347 (D.Hawaii 1973),* the courts were being asked to protect the identity of informers and sources of information deemed necessary to encourage the full disclosure of information to Government investigators. In *Carter v. Carlson, 56 F.R.D. 9 (D.D.C.1972),* the court was considering a variation of the privilege for the decision making process recognized in United States v. Nixon under which internal government communications offering opinions and recommendations are protected. This protection recognizes the need to safeguard free expression in giving intragovernmental advice by eliminating the possibility of outside examination as an inhibiting factor. See *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318, 326 (D.D.C.1966),* aff'd sub nom. *V.E.B. Carl Zeiss, Jena v. Clark, 128 U.S.App.D.C. 10, 384 F.2d 979* (D.C.Cir.), cert. denied, *389 U.S. 952, 88 S. Ct. 334, 19 L. Ed. 2d 361 (1967).* Other courts, while articulating the existence of a privilege of the Government to withhold documents in the "public interest", found that such interest did not justify the resistance to disclosure, see *Frankenhauser v. Rizzo, 59 F.R.D. 339 (E.D.Pa.1973),* [**23] cf. *Dos Santos v. O'Neill, 62 F.R.D. 448 (E.D.Pa.1974),* and thus are questionable precedent on which to base the existence of such a privilege. n4

n3. The cases cited by the district court which are in reality cases involving internal security investigation, such as *Kinoy v. Mitchell, 67 F.R.D. 1 (S.D.N.Y.1975)* and *Jabara v. Kelley, 75 F.R.D. 475 (E.D.Mich.1977)*, are on their face inapplicable here.

n4. In the oft cited case of *Brown v. Thompson, 430 F.2d 1214 (5th Cir. 1970)*, the issue of a privilege for investigatory files was not raised on appeal. The only issue was whether dismissal should have been with prejudice.

We do not deem it appropriate to extend the scope of Executive Privilege in this case beyond the lines drawn to date by the Supreme Court. n5 There is an anomaly in the assertion of a public interest "privilege" by the City to justify withholding information from a federal Commission charged by Congress to investigate in the public interest the possible denial of equal protection by, inter [**24] alia, local governmental units. Obviously, the court cannot accept the City's assertions of public interest ipse dixit. We note that the district court made its ruling without examination of the files.

n5. In light of the posture of this case, we express no view as to whether the scope of Executive Privilege available to a state or municipality in a federal cause of action is comparable to that applicable to the federal government. Cf. *In re Grand Jury Proceedings, 563 F.2d 577 (3d Cir. 1977).*

On remand, if the City persists in its resistance to discovery of the files by interposing specific claims of privilege in an appropriate manner, the district court will be obliged to balance the need of the Commission against the concerns of the City, if they are found to be legitimate, because [*231] Executive Privilege is, at most, a qualified one. The court must give more consideration to an appropriate method by which that which is legitimately privileged, such as the identity of confidential informers, if [**25] any, or intragovernmental policy discussions, may be shielded while the relevant factual data is disclosed. In this connection, the court may want to use the in camera examination device, considered sufficiently protective of the sensitive material involved in *United States v. Nixon, 418 U.S. at 706, 94 S. Ct. at 3106.*

After an in camera investigation the court will be in a position to ascertain whether the files contain primarily factual data which can be disclosed. Thus, for example, in *Wood v. Breier, 54 F.R.D. 7, 10 (E.D.Wis.1972)*, the court refused to shield a police investigatory file from disclosure, holding: "All the material in the file is of a factual as opposed to a policy discussion nature, and nowhere in the file are there any recommendations made for future action or criticisms of past actions."

Even if the City could legitimately seek to shield from discovery information relating to police officers who are defendants in pending criminal actions, a claim on which we express no view, the Commission's offer to take some evidence in executive session may provide adequate protection from excessive publicity which might interfere with a fair trial. The Commission also agreed [**26] to accept the documents with the excision of the identity of the police officers involved and we are therefore puzzled by the district court's failure to accept that offer on the grounds that the information in that form would negate the Commission's purposes. Since it is the Commission's inquiry, we assume the utility of the information is best left to it. The Commission has indicated that

the thrust of its inquiry is not directed to allegations that a particular officer may have been guilty of police brutality but to the procedure followed by the Police Department in cases where police brutality was alleged. Thus the identity of the individual police officer is far less relevant to the Commission than documents showing whether an investigation was made, when it was made, how it was conducted, and what subsequent action was taken.

Finally, we note that more than a year has now elapsed since the information was originally requested. It may be possible that subsequent events and the passage of time have caused some modification in the City's position. We are confident that the district court will direct its attention to this matter promptly so that the Commission's investigation, long [**27] delayed, can proceed expeditiously.

Accordingly, we will vacate the district court's order refusing the Commission's motion to enforce and will remand for further proceedings consistent with this opinion.

## D. *Robert P. George v. Stuart J. Ishimaru,* 849 F. Supp. 68; 1994 U.S. Dist.

LEXSEE 849 F. SUPP. 68

**ROBERT P. GEORGE, Plaintiff, v. STUART J. ISHIMARU, "Acting" Staff Director of the United States Commission on Civil Rights. Defendant.**

**Civil Action No. 94-0424 (RCL)**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

***849 F. Supp. 68; 1994 U.S. Dist. LEXIS 5039***

**April 6, 1994, Decided**
**April 6, 1994, Filed**

**LexisNexis (TM) HEADNOTES - Core Concepts:**

**COUNSEL:** [**1] FOR PLAINTIFF: CHARLES JUSTIN COOPER, SHAW, PITTMAN, POTTS & TROWBRIDGE, WASHINGTON, D.C..

FOR DEFENDANT: MARGARET S. HEWING, U.S. DEPARTMENT OF JUSTICE, CIVIL DIVISION, WASHINGTON, D.C..

FOR INTERVENOR: JACK B. GORDON, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, WASHINGTON, D.C..

**JUDGES:** Lamberth

**OPINIONBY:** ROYCE C. LAMBERTH

**OPINION:**

[*69] BENCH RULING

This matter comes before the court on plaintiff's motions for a preliminary injunction and for summary judgment, and defendant's cross-motions to dismiss and for summary judgment.

The motions have been fully briefed and orally argued today.

The court finds there are no genuine issues of any material facts which are in dispute.

Because review by the Court of Appeals will be de novo, there is no reason to delay disposition of this matter for preparation of a formal written opinion. Therefore the court announces the following findings of fact and conclusions of law. A written order will be issued today granting plaintiff's motion for summary judgment and denying defendant's dispositive motions. In light of the court's final decision today on the merits of the controversy, plaintiff's motion for preliminary injunction will therefore be denied as moot.

[*70] FINDINGS [**2] OF FACT

1. Plaintiff, Robert P. George, is one of eight commissioners of the United States Commission on Civil Rights.

2. Defendant, Stuart J. Ishimaru, has been designated by President Clinton as the Acting Staff Director of the Commission on Civil Rights.

3. When originally created by Congress as part of the Civil Rights Act of 1957, there were six Commissioners, each of whom was appointed by the President with the advice and consent of the Senate. P.L. 85-315 § 101(b), codified at *42 U.S.C. § § 1975* - 1975(e). At that time, Congress also provided that the Commission's staff director would be appointed by the President with the advice and consent of the Senate. P.L. 85-315, § 105(a).

4. The Commission was reorganized by Congress in 1983. There are now eight Commissioners. Four are appointed by the President; two are appointed by the President pro tempore of the Senate; and two are appointed by the Speaker of the House of Representatives. *42 U.S.C. § 1975* b(1). The Commissioners serve staggered six-year terms, pursuant to § 1975 b(2).

5. The President has the power to designate a Chairperson and a Vice-Chairperson [**3] from among the eight Commissioners, but Congress expressly provided that to do so, the President had to act "with the concurrence of a majority of the Commission's members." *42 U.S.C. § 1975*(e).

6. The statute as enacted in 1983 also provides that "there shall be a full-time staff director for the Commission who shall be appointed by the President with the concurrence of a majority of the Commission." *42 U.S.C. § 1975* d(a)(1).

7. When President Clinton took office, the staff director's position was vacant. One of the Commission's regional directors (Mr. Bobby Doctor) had to come to Washington from Atlanta to serve as "acting" staff director, and he had been named by the outgoing staff director on January 21, 1993, to be "acting" staff director.

8. A majority of the Commission -- five of the eight members -- sent a letter to President Clinton on June 3, 1993, endorsing Mr. Doctor, then the "acting" staff director, to be appointed by the President as staff director.

9. In late September 1993, the Chairperson of the Commission was advised by a Special Assistant to the President at the White House that President [**4] Clinton intended to appoint the defendant herein, Stuart Ishimaru, as staff director.

10. On October 1, 1993, the Chairperson of the Commission sent a letter to the White House indicating that he would not concur in the appointment of Ishimaru as staff director, nor would a majority of the Commission.

11. Thereafter, the President's nomination of Mary Frances Berry to be Chairperson of the Commission was confirmed by a majority of the Commissioners on November 19, 1993.

12. Newly appointed Chairperson Berry then, on November 22, 1993, terminated Mr. Doctor's detail to Washington and he returned to his position as regional director of the Commission's staff in Atlanta.

13. On November 26, 1993, plaintiff, Commissioner George, sent a memorandum to the acting general counsel of the Commission, Lawrence Glick, requesting an opinion as to the legality of the Chairperson's actions in terminating Mr. Doctor's detail.

14. On November 29, 1993, the acting general counsel prepared a memorandum for the Commissioners concluding that the Chairperson did not have the authority to take such unilateral personnel actions. The same day, Mr. Glick was removed by the Chairperson from serving as acting [**5] general counsel.

15. On December 2, 1993, President Clinton appointed defendant Ishimaru as "acting" staff director.

16. The next day, December 3, 1993, a majority of the Commissioners voted to reinstate Mr. Doctor as acting staff director. The Chairperson ruled the vote was "without force or effect because the President has [*71] already named somebody" as Acting Staff Director.

17. The Office of Legal Counsel of the Department of Justice subsequently issued a legal opinion on January 13, 1994, "that the Constitution vests the President with authority to appoint an Acting Staff Director for the Commission on Civil Rights and that the Commission has no authority to override the President's appointment."

18. The next day, a majority of the Commission voted on a motion to confirm President Clinton's appointment of defendant Ishimaru as Acting Staff Director, and by a vote of four against, with one abstention, and three who refused to vote, defendant Ishimaru was not confirmed as Acting Staff Director. Plaintiff George was one of the majority of the Commission who voted not to confirm defendant Ishimaru.

19. Defendant Ishimaru has continued for over four months as "acting" staff director, [**6] and performs his duties in all aspects as if he is lawfully appointed to his position.

20. President Clinton has still not nominated a staff director or sought the concurrence of a majority of the Commission.

21. The President's designation of defendant Ishimaru as "acting" staff director on December 2, 1993, came only after the President had been informed by the Chairperson of the Commission that a majority of the Commission would not concur in the appointment if defendant Ishimaru was nominated to be Staff Director. The President thereupon named defendant Ishimaru as "acting" staff director, and has not nominated anyone to be staff director.

CONCLUSIONS OF LAW

1. The parties agree that the staff director is not "an officer of the United States" in the constitutional sense, since the Commission is purely investigative and fact-finding. Accordingly, neither the Commissioners nor the staff director need to be appointed as "officers" in accordance with the Appointments Clause of the Constitution. U.S. Const., Art. II, § 2, Cl. 2. For the same reason, the Recess Appointments Clause does not apply to the Commission. Art. II, § 2, Cl.3.

2. The parties agree, therefore, that there is [**7] no constitutional impediment to Congress enacting the statutory requirement here that the President's appointment of a staff director receive the concurrence of a majority of the Commission.

3. The parties agree that the Vacancies Act does not apply to the staff director's position, since he is not a constitutional officer.

4. The parties agree that the only statutory authority for the appointment of the staff director is the provision in *42 U.S.C. § 1975* (d)(a)(1), vesting appointment authority in the President "with the concurrence of a majority of the Commission."

5. The statute is not silent. It does not contain the words acting" or "permanent" staff director; it simply provides that the staff director shall be appointed by the President with the concurrence of a majority of the Commissioners. It does not provide the President authority to appoint a staff director in any other way. This legislation does act as a limitation on the President's power to act.

6. President Clinton neither sought nor received the concurrence of a majority of the Commission for the appointment of defendant Ishimaru as staff director.

7. The court finds that President [**8] Clinton therefore violated the statute when he named defendant Ishimaru as "acting" staff director, without the concurrence of a majority of the Commissioners.

8. Congress chose, in the enabling statute here, to vest appointment authority over the staff director jointly in the President and a majority of the Commission. The President has violated this statute by acting unilaterally.

9. The court understands that this is a matter of first impression. This court rejects the argument that the President has "inherent" appointment authority under the Take Care Clause of Article II of the Constitution to appoint persons to positions like this one, where Congress has unlimited authority [*72] to vest the appointment power in whomever it chooses. No court has ever recognized that the President has such inherent authority.

10. The court finds that it has jurisdiction pursuant to *28 U.S.C. § 1331*, the federal question statute, to determine whether defendant Ishimaru was lawfully appointed as "acting" staff director of the Commission, and that there is no sovereign immunity, under *Larson v. Domestic & Foreign*

*Commerce Corp., 337 U.S. 682, 93 L. Ed. 1628, 69 S. Ct. 1457 (1949),* [**9] for the acts of a federal official, or purported federal official, who is acting in excess of his authority or under an authority not validly conferred. Pursuant to the All Writs Act, *28 U.S.C. § 1651,* this court has the power to issue the requested injunction.

11. The Amendments to the Administrative Procedure Act in 1976 were designed to broaden judicial review, and did not repeal the Larson doctrine allowing judicial review here. The provisions of Larson overturned by the APA amendments were those that restricted judicial review. The court agrees with plaintiff that the D.C. Circuit in *M. B. Schnapper v. Foley, 215 U.S. App. D.C. 59, 667 F.2d 102 (D.C.Cir. 1981)* cert. denied *455 U.S. 948, 71 L. Ed. 2d 661, 102 S. Ct. 1448 (1982)* and *Rameriz de Arellano v. Weinberger, 240 U.S. App. D.C. 363, 745 F.2d 1500 (D.C. Cir. 1984),* vacated and remanded on other grounds, *471 U.S. 1113 (1985),* are not contrary to this court's ruling today. The Larson ultra vires [**10] line of cases is still valid law today, and authorizes this court today to grant the requested relief.

Defendant has no delegated authority whatsoever, and every act he takes is ultra vires.

The court finds that under *Dugan v. Rank, 372 U.S. 609, 10 L. Ed. 2d 15, 83 S. Ct. 999 (1963)* this injunction won't affect the sovereign. There are exceptions for ultra vires acts that allow the court to enjoin such ultra vires acts. I am not enjoining the sovereign -- I am enjoining the ultra vires actions of the defendant Ishimaru.

12. The court also concludes that plaintiff has standing to maintain this action. There is nothing in the enabling statute here that says a Commissioner cannot participate in the selection of an "acting" staff director, and that he is only entitled to concur in the nomination of a "permanent" staff director. Plaintiff has been denied the right to participate in the selection of an "acting" staff director by the President's unilateral appointment. Indeed a majority of the Commission -- including the plaintiff -- has voted to oppose this appointment of defendant Ishimaru as "acting" director, [**11] but this vote has been for naught because the President asserts that he has "inherent" Presidential power to thwart the vote of the plaintiff, and indeed, of a majority of the Commission.

13. Plaintiff has been deprived of his statutory right to vote on this nomination, and this is a concrete, particularized, and actual harm that establishes his standing to sue. It also constitutes "injury in fact", just as in *Williams v. Phillips, 360 F. Supp. 1363 (D.D.C. 1973),* aff'd *157 U.S. App. D.C. 80, 482 F.2d 669 (D.C. Cir. 1973).* Just as the Senators in Williams had standing to challenge the deprivation of their constitutional right to vote on Howard Phillips' appointment as head of O.E.O., plaintiff has standing to challenge the deprivation of his right to vote on a presidential nomination to the position of staff director.

14. Moreover, plaintiff did in fact vote, and he voted with a majority of the Commission to not confirm defendant Ishimaru as "acting" staff director, yet his vote has been ignored. This also constitutes "injury in fact."

15. Because the court finds that the Commission's enabling statute [**12] is the exclusive method for appointing the staff director, the plaintiff's statutory right as a Commissioner to participate in that appointment has been denied, and this is not a claim that can only be brought by a majority of the Commission. The District Court in the Williams case held that each Senator who had a vote had standing to sue over President Nixon's invalid appointment of Phillips as "acting" Director of O.E.O. I hold that each Commissioner of the Civil Rights Commission here has standing

to sue over President Clinton's [*73] invalid appointment of defendant Ishimaru as "acting" staff director of the Commission on Civil Rights.

16. Plaintiff is asserting a statutory right that is specifically granted to him as an individual member of the Commission. This court rejects the defendant's argument that individual members of collegial bodies cannot sue under these circumstances unless they are joined by a majority of the collegial body.

17. Just as in *Olympic Federal Sav. and Loan Asso. v. OTS, 732 F. Supp. 1183* (D.D.C.), appeal dism., *903 F.2d 837* (D.C.Cir. l990), the appointment process here subjects the selection process [**13] to public scrutiny, thereby affecting who takes office, how they perceive their function, and how they exercise their powers. Plaintiff has a statutory right to participate in that process that has been denied by the President's unilateral appointment of an "acting" staff director, and the President's failure to nominate a staff director.

18. The court is not unsympathic to the government's argument that it needs to continue to function. But the government must function in a lawful manner. The court is hopeful that President Clinton will promptly consult with the Commission and appoint a staff director who has the confidence of a majority of the Commissioners and who can be quickly confirmed. Today's decision can then be vacated as moot, just as was my decision in Olympic Federal Savings and Loan. There, I declared the Office of Director of Office of Thrift Supervision, a federal agency with thousands of employees, to be vacant. The President appealed, as I'm sure President Clinton will here. But the President also quickly picked a new director, who was promptly confirmed, and my ruling became moot. I hope the same will happen here. After all, the statutory scheme is for the President, [**14] jointly, with a majority of the Commission, to appoint a staff director. The important work of the Commission on Civil Rights should not be impeded by continuing to argue about "inherent" Presidential power which no court in the nation's history has ever recognized.

Because the defendant Ishimaru was not validly appointed, he has no lawful authority to act, and the court will issue an injunction this date enjoining defendant from continuing to function as staff director or acting staff director of the Commission.

The court issues this written bench ruling based on the oral findings of fact and conclusions of law read in open court this date.

A separate order shall issue.

Royce C. Lamberth

United States District Judge

DATE: 4-6-94

ORDER

For the reasons set forth on the record in open court today, this court hereby ORDERS that:

1. Defendant's motion to dismiss is DENIED.

2. Defendant's motion for summary judgment is DENIED.

3. Plaintiff's motion for summary judgment is GRANTED.

4. Plaintiff's motion for preliminary injunction is DENIED as moot.

5. Defendant Stuart J. Ishimaru is, from this date forward, permanently enjoined from representing himself as the staff director or [**15] the "acting" staff director of the United States Commission on Civil Rights ("Commission"), and from exercising the authorities and performing the functions of staff director of the Commission until such time as his appointment receives the concurrence of a majority of the members of the Commission.

6. Defendant's request for a stay pending appeal is DENIED.

SO ORDERED.

Royce C. Lamberth

United States District Judge

DATE: 4-6-94

## E. Mary Frances Berry et al. v. Ronald Reagan, President, United States of America

**Mary Frances Berry et al., Plaintiffs, v. Ronald Reagan, President, United States of America, Defendant.**

**Civil Action No. 83-3182.**

**United States District Court for the District of Columbia.**

***1983 U.S. Dist. LEXIS 11711; 32 Empl. Prac. Dec. (CCH) P33,898***

**November 14, 1983**

**CORE TERMS:** removal, power to remove, civil rights, legislative history, tenure, duty, power of removal, silence, preliminary injunction, final report, issuance, summary judgment, substantial likelihood, preliminary relief, disruptive, pleasure, prevail, injunctive relief, administrative process, congressional intent, available evidence, irreparable injury, personnel, contemporaneous, recommendations, appointment, prescribe, override, expire, Civil Rights Act

**OPINIONBY:**
**[*1]**

JOHNSON

**OPINION:**

JOHNSON, D.J.: On October 26, 1983, plaintiffs filed a complaint for declaratory judgment and injunctive relief, together with applications for a temporary restraining order and a preliminary injunction seeking to enjoin the President of the United States from removing them as Commissioners of the U.S. Commission on Civil Rights (Commission). After a full hearing and consideration of the entire record, plaintiffs' application for a

temporary restraining order was denied on October 31, 1983. The matter is presently before the Court on plaintiffs' motion for preliminary injunction and defendant's motion of summary judgment. After careful consideration of the pleadings, the memoranda of law, the evidence, the argument of counsel, and the entire record herein, the Court finds that the motion for preliminary injunction should be granted and the motion for summary judgment denied.

Background

The Commission on Civil Rights is a temporary, bipartisan agency established by Congress pursuant to section 101 of the Civil Rights Act of 1957 (Act), *42 U.S.C. § 1975* et seq. (1976 ed. & Supp V 1981). It is composed of six members, appointed by the President, by and with **[*2]** the advice and consent of the Senate. *42 U.S.C. § 1975*(b). The Commission, charged to investigate, study, and collect informantion regarding deprivations of both civil rights and equal administration of justice, *42 U.S.C. § 1975c*, is required to submit interim reports, as well as a final report of its activities, findings, and recommendations to the President and to the Congress. *42 U.S.C. § 1975c*(c). To perform its duties, the Commission may hold hearings and issue subpoenas for the attendance and testimony of witnesses and the production of evidence. *42 U.S.C. § 1975d*(f). While the Act does not prescribe a fixed term for members of the Commission, it does establish a fixed life for the Commission. The present Commission expires sixty days after submission of its final report and recommendations to the President and to Congress. n1 *42 U.S.C. 1975c*(d).

> n1 The final report of the Commission was due September 30, 1983. *42 U.S.C. § 1975c*(c). Therefore, the Commission is due to expire on November 29, 1983.

Plaintiffs were appointed to the Commission by former President Carter in 1980. On June 1, 1983, President Reagan nominated Morris B. Abram, John H. Bunzel, **[*3]** and Robert A. Destro as members of the Commission to replace plaintiffs and Rabbi Murray Saltzman, who is not a party to this action. On October 24, 1983, his nominees not having been confirmed by the Senate, the President notified plaintiffs and Rabbi Saltzman that their tenure on the Commission was terminated effective that day.

Discussion

In order to prevail on an application for injunctive relief, plaintiffs must demonstrate 1) that there is a substantial likelihood they will succeed on the merits of their claim; 2) that they will suffer irreparable harm if the requested relief is denied; 3) that there will be no substantial harm to other parties of interest if the requested relief is granted; and 4) that the public interest favors the issuance of a preliminary injunction. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C.Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C.Cir. 1958).*

A. Likelihood of Success on the Merits

This case presents the serious question of whether the President has the power to remove members of the Civil Rights Commission at his discretion or whether Congress has **[*4]** restricted this power. Plaintiffs, therefore, must demonstrate that there is a substantial likelihood they will prevail on the merits that 1) the President does not have the unrestrictable power to remove members of the Commission and 2) Congress exercised its authority to restrict the President's power of removal with respect to members of the Commission.

1. President's Power of Removal

It is settled that the Constitution gives the President unlimitable power to remove "purely executive officials." *Myers v. United States, 272 U.S. 52 (1926); Humphrey's Executor v. United States, 295 U.S. 602 (1935); Weiner v. United States, 357 U.S. 349 (1958).* In Humphrey's Executor, the Supreme Court emphasized that "[w]hether the power of the President to remove an officer shall prevail over the authority of congress to condition the power by fixing the definite term and precluding a removal except for cause, will depend upon the character of the office." *295 U.S. at 631*. The Court in setting forth the "character of the office" of a purely executive official, stated a "purely executive officer" is an officer who is "restricted to the performance of executive functions," and thus the office **[*5]** is "charged with no duty at all related to either the legislative or judicial power." *Id. at 627*. In other words, the "purely executive officer" performs no quasi-legislative or quasi-judicial tasks.

The "[f]unction of [the] Commission is purely investigative and fact-finding, ... and the only purpose of its existence is to find facts which may subsequently be used as a basis for legislataive or executive action." *Hanna v. Larche, 363 U.S. 420,* rehearing denied, *364 U.S. 855 (1960).* Commissioners are not restricted to the performance of executive tasks. Rather, "[i]n making investigations and reports thereon for the information of Congress under [ § 1975c], in aid of the legislative power, it acts as a legislative agency." *Humphrey's Executor, 296 U.S. at 628.* Moreover, Commissioners possess no inforcement powers for only the Attorney General may seek judicial enforcement of the Commission's subpoenas. *42 U.S.C. § 1975d*(g). The evidence may support a finding that members of the Commission are not restricted to the performance of solely executive functions, and the President thus does not possess unrestrictable power to remove its members. See *Humphrey's Executor,* **[*6]** *295 U.S. at 629.*

2. Congressional Restriction of the President's Removal Power

Plaintiffs must further demonstrate that there is a substantial likelihood that Congress restricted the President's power to remove members of the Commission at his discretion. Unlike the Federal Trade Commission Act in Humphrey's Executor, supra, the Act creating the Commission on Civil Rights is silent as to the President's power to remove. The longstanding rule is that, "in the face of statutory silence, the power of removal presumptively is incident to the power of appointment." *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy, 367 U.S. 886 (1961); In re Hennen, 38 U.S. (13 Pet.) 230 (1839); Kalaris v. Donovan, 697 F.2d 376 (1983).* However, the President's power to remove in the face of statutory silence is a presumption and thus, this court is not relieved of its duty to determine whether Congress intended to restrict the removal power of the *President.Weiner, 357 U.S. at 352-56; Kalaris, 697 F.2d at 389-397.* Moreover, when making this determination, the Court must consider "all of the available evidence." n2 *Kalaris, 697 F.2d at 397 n.86.*"The most reliable factor for drawing an inference **[*7]** regarding the President's power of removal is the nature of the function that Congress vested in the ... Commission." *Weiner, 357 U.S. at 353.* The Supreme Court based its assessment of the reliability of this factor in the "sharp line of cleavage" the Court drew in Humphrey's between "officials who [are] part of the Executive establishment, and ... thus removable by virtue of the President's constitutional powers, and those who are members of a body "to exercise its judgment without the leave or hindrance of any other official or any department of the government."" Id. quoting *Humphrey's Executor, 295 U.S. at 625-26.* Thus, this court must ascertain whether

Congress required the Commissioners to act independently, with "absolute freedom from Executive interference", in the discharge of their duties. *Weiner, 357 U.S. 353.*

> n2 In *Kalaris, supra,* a controlling case in this circuit, tthe Court of Appeals held that Congress intended for the Secretary of Labor to have discretionary power to remove members of the Department of Labor's Benefits Review Board.697 F.2d at 397. The Court reached this conclusion only after reviewing "all of the available evidence. Id. at n. 86. This evidence included "the presumption that the removal power is incident to the appointment power, Congress' silence in the face of this presumption, the preenactment legislative history, the Secretary's contemporaneous and consistent interpretation of his authority, and the recent floor activity to amend the Act." Id. **[*8]**

a. The Act

There is no doubt that the starting point in ascertaining congressional intent is the language of the Act itself. Section 101(a) of the Act, *42 U.S.C. § 1975*(a), states that "[t]here is created in the executive branch of the Government a Commission on Civil Rights. ..." Defendant asserts that this language is the "most compelling indication of congressional intent regarding the President's removal power." However, notwithstanding that the Supreme court determined that "the most reliable factor" for making such an inference is the nature of the functions of the Commissioners, both plaintiffs and defendant proffered evidence showing the neutrality of this language in this instance. There are independent agencies in the executive branch whose officials are subject to removal at the President's discretion. n3 See e.g., the Postal Rate commission, *39 U.S.C. § 3601*(a); the Office of Personnel Management, *5 U.S.C. § 1101;* the Veterans Administration, *38 U.S.C.§ 201;* see also 103 Cong. Rec. 13457, 13459 (1957). Defendant's Statement of Points and Authorities in Response to Plaintiffs' Opposition to Defendant's motion for Summary Judgment and in Further Opposition **[*9]** to Plaintiffs' Motion For A Preliminary Injunction at 5; Plaintiffs' Memorandum in Support of Preliminary Injunction at 14. Thus, this language is not the most compelling indicia to fairly draw an inference that Congress intended members of the Commission to remain in office at the will of the President.

> n3 Since at least 1958, it has become increasingly apparent that the placement of an agency in the executive branch is not the major determinant of the scope and limits of the President's power of removal. This progression in the law can be considered by the Court when determining the intent of Congress with respect to the removal power of the President under the Civil Rights Act of 1957. See discussion, infra at 9-11.

b. The Commissions

The language on the commissions evidencing the appointment of members of the Commission recites that Commissioners serve "during the pleasure of the President." Defendant maintains that this phrase constitutes a contemporaneous administrative interpretation of twenty-five years and is entitled to great deference by the Court when construing the intent of Congress. Defendant's argument sounds in persuasion; however, the words used provide **[*10]** the Court with little if any guidance than it initially posessed. The phrase "during the pleasure of the President" is merely a restatement of the well established rule that in the face of statutory silence the President's power to remove presumptively is incident to the power to appoint. In 1818, the Attorney General determined that the insertion of the phrase, "during the pleasure of the President," on a commission was legally

permissible in the face of statutory silence, and it has been the longstanding practice of the Chief Executive to use this language when the statute is silent as to the removal power. *22 Op. Att'y Gen. 82 (1818).* The Attorney General stated, "if ... the President had the right to issue such a commission, he has, on the face of that commission, the power of removal. ..." (Emphasis added). Id. Thus, the recitation of the phrase, "during the pleasure of the President", on the commissions of the members does no more than reflect the existing rule of statutory silence. Moreover, the commission is conclusive evidence of the appointment only and not of the tenure of the official or the scope and limit of the President's removal power where the official is **[*11]** not a purely executive official. see *Marbury v. Madison, 1 Cranch 135, 156, 161 (1803).* Congress prescribes the tenure and the restrictions it desires to place on the President's power of removal in these cases. *Humphrey's Executor, 295 U.S. at 629; Weiner, 357 U.S. at 349-56; Marbury, 1 Cranch at 161.*

c.Legislative History

A reasonable inference that can be drawn from the facts in this case is that President Reagan removed the plaintiffs from the Commission to replace them with persons of his own selection. The assumption underlying this removal is that the Commission is subject to the control of the President in the discharge of its duties. Accord, *Weiner, 357 U.S. at 354.* Plaintiffs cite extensive legislative history to support their contention that Congress intended to create a Commission, bipartisan in nature, and independent of Presidential control and directive. Defendant argues, however, that legislative history subsequent to the initial enactment of 1957 is postenactment legislative history, and thus it should be given little, if any, weight in determining the intent of Congress. Defendant's position is correct when the Act is analyzed apart from its unique nature. **[*12]** The Act originally creating the Commission required the subsequent Congress to introduce a bill for reauthorization of the Commission. The passage of a bill for reauthorization required Congress to undergo congressional debate and discussion. Thus, the post-1957 legislative history should be viewed as contemporaneous legislative history that is entitled to considerable deference by the courts when construing the intent of Congress.

Similarly, there is adequate evidence in the legislative record to support plaintiffs' contention that Congress intended the duties of the Commission to be discharged free from any control or coercive influence by the President or the Congress. When performing its fact-finding, investigatory, and monitoring functions, for example, the Commission is often required to criticize the policies of the Executive that are contrary to existing civil rights legislation. This Court finds that there may be sufficient legislative history to support the proposition that Congress intended the members of the Commission to discharge their duties "without leave or hindrance of any official or any department of the government" including the President.

d. Tenure **[*13]** of the Commissioners

The Act creating the Commission neither fixes the term of office of Commissioners nor prescribes the mode by which the tenure of the Commissioners is defined. Thus, this Court must consider whether the attribution of an intent on the part of Congress to restrict the President's power to remove Commissioners will result in members of the Commission holding office for like in contravention to the decision of *Shurtleff v. United States, 189 U.S. 311 (1903).* Accord *Humphrey's Executor, 295 U.S. at 623; Kalaris, 697 F.2d at 395.* There is no doubt that it is "quite inadmissible to attribute an intention on the part of Congress to make such an extraordinary change in the usual rule" against life tenure except for Article III judges. *Shurtleff, 189 U.S. at 318.* However, as the Supreme Court explained in Humphrey's,

the Shurtleff Court refused to imply such a restriction since the conclusion that Congress intended general appraisers to have life tenure was so extreme that any ruling which would produce that result should be avoided. *Humphrey's Executor, 295 U.S. at 623.* The inference of a congressional intent to restrict the President's removal power in this case will **[*14]** not produce this "extreme result." Rather, similar to the Commissioners in *Weiner, supra,* the limit on the life of the Civil Rights Commission would be the tenure of members of the Commission. Upon consideration of all the available evidence this Court finds that there is a substantial likelihood that plaintiffs will prevail on the merits of their claim.

B. Irreparable Harm

Plaintiffs burden of demonstrating irreparable injury is defined by the principles enunciated by the Supreme Court in Sampson v. Murray, the controlling case in Government personnel actions. *415 U.S. 61 (1974).* Under Sampson, a federal employee seeking injunctive relief must make a strong showing of irreparable injury "sufficient in kind and degree to override the factors cutting against the general availability of preliminary injunctions [such as disruption of the administrative process] in Government personnel cases." *Id. at 84.* Loss of income and damage to reputation resulting from a wrongful discharge "falls far short of the type of irreparable injury which is necessary" to override the factors militating against the issuance of preliminary relief in these cases. *Id. at 91-92.* Thus, this Court, **[*15]** when exercising its equitable powers, must give serious weight to 1) the obviously disruptive effect the grant of preliminary relief will have on the administrative process; 2) the rule that the Government traditionally receives the widest latitude in the dispatch of its internal affairs and 3) the traditional reluctance of courts in equity to enforce contracts for personal services either at the request of the employers or of the employee. *Id. at 83.*

In this case, plaintiffs' allege that the injury they suffer is the deprivation of their statutory right to function as Commissioners until the Commission expires on November 29, 1983, and their unlawful removal from office by the President. The irreparable nature of this injury is evident by the obviously disruptive effect the denial of preliminary relief will likely have on the Commission's final activities. n4 Although the final report of the Commission's activities, findings, and recommendations was due September 30, 1983, it is undisputed that the report of the Commission submitted on September 30, 1983, was not authorized by the Commission. Further, the Commission instructed its staff to prepare the draft of the final report **[*16]** in order that the report could be issued prior to November 29, 1983. It is likely that the Commission's ability to fulfill its mandate is disrupted by plaintiffs removal for the Commission is left without a quorum. The Commissioners are also under a statutory mandate to wind-up the business of the Commission.

> n4 In Sampson, the Supreme Court considered the disruptive effect of the grant of injunctive relief on the administrative process. However, it is equally important to examine the disruptive effect of a denial of such relief.

Moreover, it is not clear that the President has the power to remove Commissioners at his discretion and that he should be given the widest latitude to exercise this authority. Similarly, the services rendered by the Commissioners are not properly characterized as "personal services", but rather they provide a quasi-legislative service to Congress in the furtherance of civil rights in this country. Finally, plaintiffs do not have administrative, statutory, or other relief that is readily available to may federal employees. Plaintiffs have

demonstrated that the type of injury they suffer is sufficient in kind and degree to override the factors **[*17]** militating against the issuance of preliminary relief in Government personnel actions.

C. Other Criteria

The public interest strongly favors the issuance of a preliminary injunction in this case. The work of the Commission is vital to the continued protection and advancement of civil rights in this country. Further, issuance of this extraordinary relief does not work any hardship on the defendant and other interested parties. An order consistent with the Memorandum Opinion will be issued this date.

Order

Upon consideration of Defendant's Motion for Summary Judgment, the Statement of Points and Authorities In Support thereof, the Statement of Material Facts As To Which There Is No Genuine Dispute, the Plaintiffs' Opposition Thereto and the Statement of Genuine Issues In Dispute, It is Ordered This the 14th day of November, 1983 that:

Defendant's Motion for Summary Judgment is hereby denied.

Order

Upon Consideration of the motion of plaintiffs for a preliminary injunction, the pleading memoranda of law, evidence, argument of counsel, and consistent with the Memorandum Opinion filed this date, it is this 14th day of November, 1983,

Ordered that the motion of plaintiffs **[*18]** is granted; and it is further

Ordered that defendant is preliminarily enjoined from preventing or interfering with plaintiffs service as members of the U.S. Commission on Civil Rights.

## F. Term of a Member of the Mississippi River Commission

### TERM OF A MEMBER OF THE MISSISSIPPI RIVER COMMISSION

*The term of a member of the Mississippi River Commission is set by the statute governing his office, and the term dictated by the statute applies even though the language of his nomination, confirmation, and commission calls for a different term.*

May 27, 1999

**MEMORANDUM FOR THE EXECUTIVE CLERK**

You have asked for our opinion whether the term of a member of the Mississippi River Commission is set by the language of his nomination, confirmation, and commission, even though the statute governing his office calls for a different term. We conclude that the term dictated by the statute applies.

The Mississippi River Commission consists of seven members, appointed by the President with the advice and consent of the Senate. 33 U.S.C. §§ 641-642 (1994). Three of the members are from the Engineer Corps of the Army, one from the National Ocean Survey, and three from "civil life." Id. § 642. Each commissioner from civil life "shall be appointed for a term of nine years." Id.

Ordinarily, when a statute provides for an appointee to serve a term of years, the specified time of service begins with the appointment. Case of Chief Constructor Easby, 16 Op. Att'y Gen. 656 (1880). A different rule generally applies to commissions whose members have staggered terms. There, to preserve the staggering required by statute, each member may serve only until the passage of the specified number of years calculated from the expiration of his predecessor's term, even if the member's confirmation and appointment take place after that prior term has expired. Memorandum for Tim Saunders, Acting Executive Clerk, Executive Clerk's Office, from Dawn Johnsen, Deputy Assistant Attorney General, Office of Legal Counsel, Re: When the Statutory Term of a General Trustee of the John F. Kennedy Center for the Performing Arts Begins (Sept. 14, 1994); Memorandum for Nelson Lund, Associate Counsel to the President, from John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Starting Date for Terms of Members of the United States Sentencing Commission (May 10, 1990).

Because the Mississippi River Commission's members do not serve staggered terms, its members' terms, as we understand the practice, have previously been calculated from appointment, rather than from the expiration of the predecessors' terms. In the case that prompts your question, however, this rule was not followed in the nomination, confirmation, and commission of the member. The predecessor's term expired October 21, 1996. See 133 Cong.

Rec. 28444 (1987) (Senate confirmation). The President's nomination of the successor was "for a term expiring October 21, 2005," 144 Cong. Rec. S10,943 (daily ed. Sept. 24, 1998) – nine years after the previous term expired – rather than for a term of nine years to begin upon appointment. Cf. 133 Cong. Rec. 1929 (1987) (predecessor's nomination was "for a term of 9 years"). The Senate likewise gave its advice and consent to the nomination incorporating the wrong term. 144 Cong. Rec. S12,963 (daily ed. Oct. 21, 1998). We understand that, in accordance with the nomination and confirmation, the commission also specified a term expiring October 21, 2005.

The language of a nomination, confirmation, and commission cannot alter a statutory term. The opinion of Solicitor General Phillips in Case of Chief Constructor Easby, which Attorney General Devens approved, stands for this principle. Easby had received a recess appointment as Chief of the Bureau of Construction and Repair in the Navy Department. The wording of his later nomination, confirmation, and commission for the office, which had a statutory four-year term, rested on a calculation running from the date of the recess appointment, rather than the appointment with the Senate's advice and consent.[1] Solicitor General Phillips concluded that "[t]he law of the term of the office, of course, controls special language in the nomination and confirmation," and because "[t]he term during which Mr. Easby served under the temporary appointment was, by law, a different term from that which commenced" upon his appointment with the Senate's advice and consent, "his term of office begins at the date of his appointment by and with the consent of the Senate, and not at the date of his previous temporary appointment by the President, notwithstanding the special wording of his nomination to the Senate, and of his commission." 16 Op. Att'y Gen. at 656, 657.

This principle squares with a pronouncement of the Supreme Court (although it may only have been dictum), Quackenbush v. United States, 177 U.S. 20, 27 (1900) ("the terms of the commission cannot change the effect of the appointment as defined by the statute"), and has been followed by our Office, Impact of Panama Canal Zone Treaty on the Filling of the Vacancy in the Office of the District Judge for the United States District Court for the District of the Canal Zone, 1 Op. O.L.C. 236, 237 n.4 (1977); Memorandum for John W. Dean III, Counsel to the President, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Presidential Commissions at 5 (Dec. 1, 1971).[2]

[1] The recess appointment took place on April 30, 1877. For reasons that are unclear, the nomination, confirmation, and commission were all "from April 28, 1877." 16 Op. Att'y Gen. at 656. Also, the entire period from the beginning of the recess appointment had been subtracted from Easby's four-year term, even though the recess appointment expired before Easby was confirmed and appointed. Id. at 656.

[2] Attorney General Cummings' opinion Term of Office of Major General Patterson as Surgeon General – Recess Appointment, 37 Op. Att'y Gen. 282, 287 (1933), did not reach a contrary conclusion about the principle, but held that, in view of long practice under a specific statute, the four-year term in that case included prior service under a recess appointment.

Consequently, the term in this case ends nine years after the appointment, rather than October 21, 2005. The "special language in the nomination and confirmation," as well as the language of a commission that "conform[s] to the . . . wording of that nomination and confirmation," cannot detract from the statutory specification of the term. 16 Op. Att'y Gen. at 656, 657.

DANIEL KOFFSKY
Acting Deputy Assistant Attorney General
Office of Legal Counsel

## G. Starting Date for Calculating the Term of an Interim U.S. Attorney

### STARTING DATE FOR CALCULATING THE TERM OF AN INTERIM UNITED STATES ATTORNEY

*Under 28 U.S.C. § 546(c)(2), the 120-day term of an interim United States Attorney appointed by the Attorney General is calculated from the date of the appointment, rather than the date on which the vacancy occurred.*

**March 10, 2000**

**MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL**

You have asked for our opinion whether the 120-day term of an interim United States Attorney appointed by the Attorney General begins to run on the date of the vacancy or on the date of the appointment. *See* 28 U.S.C. § 546 (1994). Although under a number of statutes the term of service is calculated from the date of the vacancy,[(1)] the 120-day period in § 546(c)(2) is calculated from the date of the appointment by the Attorney General.

Subsection 546(a) provides that the Attorney General may, subject to certain limitations, "appoint a United States attorney for the district in which the office of United States attorney is vacant." Subsection 546(c), in turn, delimits the term during which such a United States Attorney may serve. Under that provision, a United States Attorney appointed by the Attorney General may serve until the earlier of (1) the qualification of a United States Attorney appointed by the President under 28 U.S.C. § 541 or (2) "the expiration of 120 days after appointment by the Attorney General under this section." 28 U.S.C. § 546(c).[(2)]

Our conclusion that the 120 days begins upon appointment by the Attorney General is based first and foremost on the plain language of § 546(c)(2). See, e.g., Robinson v. Shell Oil Co., 519 U.S.

337, 340 (1997) ("Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" (internal citation omitted)). The 120-day time period, by the terms of the statute, unambiguously begins with the Attorney General's appointment: "the expiration of 120 days *after appointment by the Attorney General* under this section." 28 U.S.C. § 546(c)(2) (emphasis added).

The language, moreover, is consistent with the nature of the appointment under § 546. Unlike statutes providing for the designation of an acting officer, § 546 provides for the appointment of a full fledged United States Attorney. See United States v. Gantt, 194 F.3d 987, 999 n.5 (9th Cir. 1999) ("Section 546(d) appointments are fully-empowered United States Attorneys, albeit with a specially limited term, not subordinates assuming the role of 'Acting' United States Attorney."). As a general rule, "when a statute provides for an [officer] to serve for a term of years, the specified time of service begins with the appointment," except for a multi-member body with staggered terms, in which case the term is calculated from the expiration of the prior term in order to maintain the stagger. Memorandum for G. Timothy Saunders, Executive Clerk, from Daniel Koffsky, Acting Deputy Assistant Attorney General, Re: Term of a Member of the Mississippi River Commission 1 (May 27, 1999). Since there is no issue regarding staggered terms here, the general rule would apply.

In addition, while we are unaware of any cases specifically addressing when the 120-day period begins, courts have generally assumed that that period is calculated from the date of the appointment, rather than from the date of the vacancy. When explaining that the 120-day period under § 546(c)(2) has expired in particular cases, courts have usually identified the date on which the appointment was made and the date 120 days after the appointment, without referring to when the vacancy itself first arose. See, e.g., United States v. Colon-Munoz, 192 F.3d 210, 216 (1st Cir. 1999), petition for cert. filed, No. 99-1433 (Feb. 28, 2000); In re Grand Jury Proceedings, 673 F. Supp. 1138, 1139 (D. Mass. 1987).

Finally, because the authority for the Attorney General to appoint a United States Attorney was added to § 546 as a late amendment to more general legislation, there is very little legislative history on the provision. The legislative history that exists, however, is consistent with the conclusion that the 120-day period is to be calculated from the date of the appointment, rather than from the date of the vacancy: "a person appointed by the Attorney General serves only for 120 days, or until a person appointed to the office by the President has qualified, if that is earlier." 132 Cong. Rec. 32,806 (1986) (statement of Rep. Berman) (emphasis added). The focus is on the length of the interim United States Attorney's service, rather than the length of time since the vacancy arose. *Cf.* Doolin Sec. Sav. Bank v. Office of Thrift Supervision, 139 F.3d 203, 209 (D.C. Cir. 1998) (concluding that the language of the Vacancies Act supports calculating its time limits from the President's designation, rather than the vacancy, because the Act speaks in terms of "how long the position may be 'filled,' not when the President must do the filling").

For these reasons, we conclude that the 120-day period in § 546(c)(2) is calculated from the date of the appointment by the Attorney General.

RANDOLPH D. MOSS
Acting Assistant Attorney General
Office of Legal Counsel

---

1. See, e.g., 5 U.S.C.A. § 3346(a)(1) (West Supp. 1999) ("may serve in the office- (1) for no longer than 210 days beginning on the date the vacancy occurs"); 28 U.S.C. § 992(a) (1994) (six year staggered terms for members of the United States Sentencing Commission).

2. In addition to appointment by the Attorney General, § 546 provides a second mechanism for appointing an interim United States Attorney. If the 120-day term of a United States Attorney appointed by the Attorney General expires, the district court "may appoint a United States attorney to serve until the vacancy is filled." 28 U.S.C. § 546(d).

## H. United States of America and Peter N. Kirsanow, in his official capacity as Member, United States Commission on Civil Rights, Appellants v. Victoria Wilson, et al., Appellees

**United States of America and Peter N. Kirsanow, in his official capacity as Member, United States Commission on Civil Rights, Appellants v. Victoria Wilson, et al., Appellees**

**No. 02-5047**

**UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

***351 U.S. App. D.C. 261; 290 F.3d 347; 2002 U.S. App. LEXIS 8907; 82 Empl. Prac. Dec. (CCH) P41,062***

**May 1, 2002, Argued**
**May 9, 2002, Decided**

**SUBSEQUENT HISTORY: [**1]** Writ of certiorari denied: *Wilson v. United States, 2002 U.S. LEXIS 8473* (U.S. Nov. 18, 2002).

**PRIOR HISTORY:** Appeal from the United States District Court for the District of Columbia. (No. 01cv02541).

**DISPOSITION:** Reversed and remanded.

**COUNSEL:** Gregory G. Katsas, Deputy Assistant Attorney General, U.S. Department of Justice, argued the cause for appellants. With him on the brief were Roscoe C. Howard Jr., U.S. Attorney, Douglas N. Letter, Jacob M. Lewis and Ara B. Gershengorn, Attorneys, U.S. Department of Justice.

Leon Friedman and Theodore V. Wells Jr. argued the cause for appellees. With them on the brief were Julia Tarver, Geoffrey F. Aronow and Paul S. Mandell.

**JUDGES:** Before: SENTELLE, RANDOLPH and TATEL, Circuit Judges. Opinion for the Court filed by Circuit Judge SENTELLE.

**OPINIONBY:** SENTELLE

**OPINION:**

**[*350]** SENTELLE, *Circuit Judge*: On January 13, 2000, President Clinton appointed appellee Victoria Wilson to the United States Commission on Civil Rights under a commission expressly

stating that the appointment was "for the remainder of the term expiring November 29, 2001," left vacant by the death in office of a prior member. After November 29, 2001, President Bush, treating Wilson's commission as having expired on that date, appointed appellant Peter Kirsanow to succeed her. At the next meeting of the Commission, that body recognized **[**2]** Wilson as a continuing member on her assertion that she was entitled to a full six-year term on the Commission running from January 13, 2000, to January 12, 2006. The United States and Kirsanow filed this action seeking a declaratory judgment that Wilson's term had expired and that Kirsanow is now a member of the Commission. The District Court granted summary judgment in favor of Wilson. The United States and Kirsanow appealed. Because we agree with appellants that Wilson's term had expired, we reverse the District Court and remand with instructions for it to enter summary judgment for the appellants.

I. Background

The United States Commission on Civil Rights ("the Commission") is charged with investigating allegations of deprivation of voting rights on the basis of "color, race, religion, sex, age, disability, or national origin." *42 U.S.C. § 1975a*(a)(1). In addition the Commission is empowered to conduct studies and disseminate information relating to discrimination. *Id.* § 1975a(a)(2). The Commission's functions are purely investigatory and advisory - it has neither the power to enforce federal law, nor to promulgate any rules with the force of law. **[**3]** *See Hannah v. Larche, 363 U.S. 420, 441, 4 L. Ed. 2d 1307, 80 S. Ct. 1502 (1960); cf. United States v. Mead Corp., 533 U.S. 218, 221, 150 L. Ed. 2d 292, 121 S. Ct. 2164 (2001).*

The Commission was first created in 1957, and as originally established was composed of six members serving open-ended terms at the pleasure of the President. *See* Pub. L. No. 85-315 § 101(b), 71 Stat. 634 (1957). Congress reauthorized and reorganized the Commission in 1983 by expanding it from six to eight members, providing that not more than four of the members could at any one time be from the same party, dividing the appointment power between the President and Congress, establishing that the President could only remove members for neglect of duty or malfeasance, and staggering the terms of the Commissioners. Specifically, the 1983 Act stated that the "term of office **[*351]** of each member of the Commission shall be six years; except that (A) members first taking office shall serve as designated by the President, subject to [provisions staggering the initial appointments], and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his **[**4]** predecessor was appointed." Pub. L. No. 98-183 § 2(b)(2), 97 Stat 1301 (1983) ("the 1983 Act"). The staggering provisions created two groups of four commissioners each. The first group would serve for three years, at which point their successors would be appointed to six-year terms. The second group would serve for six years from the outset. *See id.* § 2(b)(3). Under this structure, the terms of office would be regularly staggered with half of them expiring every three years. The 1983 Act provided for the Commission to expire in 1989. Nonetheless the Commission continued to operate via the process of annual appropriations until reauthorized.

In 1994 the Commission was formally reauthorized. Pub. L. No. 103-419, 108 Stat. 4338 (1994) ("the 1994 Act"). This Act has been dubbed an effort to "more concisely rewrite[] the 1983 [Act]." H.R. Rep. No. 103-775, at 4, *reprinted in* 1994 U.S.C.C.A.N. 3532, 3533 (1994). Like the 1983 Act, the 1994 Act provides that "the term of office of each member of the Commission shall be 6 years." *42 U.S.C. § 1975*(c). However, instead of the initial staggering provisions that followed in the 1983 Act, the 1994 Act merely **[**5]** provided: "The term of each member of the Commission

in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994." *42 U.S.C. § 1975*(c). The Act did not contain any language referring to filling vacancies. The 1994 Act did preserve the division of appointment power between the President and Congress, as well as the requirements for partisan balance, and the limitations on presidential removal of members. *See 42 U.S.C. § 1975*(b), (e). The 1994 Act provided for the Commission to terminate on September 30, 1996, *42 U.S.C. § 1975d*, however, it has again continued to operate pursuant to annual appropriations.

On November 30, 1995, then-President Clinton appointed retired Judge A. Leon Higginbotham to a six-year term as a member of the Commission. His commission stated that his appointment was "for a term expiring November 29, 2001." He replaced Arthur A. Fletcher, whose term expired on November 29, 1995. On December 14, 1998, Judge Higginbotham died in office. To fill this vacancy, President Clinton appointed appellee, Victoria Wilson, to the Commission **[**6]** on January 13, 2000. Her commission expressly states that her appointment was "for the remainder of the term expiring November 29, 2001." Treating Wilson's term as having expired on November 29, President Bush appointed appellant Peter Kirsanow on December 6, 2001, to succeed Wilson on the Commission. Kirsanow was administered the oath of office by D.C. Superior Court Judge Maurice A. Ross; however, the Chair of the Commission, Mary Frances Berry, refused to recognize him or allow him to participate in Commission activities. The Chair instead continued to recognize Wilson as a member of the Commission and allowed her to participate as such.

The United States and Kirsanow (collectively "appellants") filed this action in the United States District Court for the District of Columbia seeking declaratory relief against Wilson. The Commission, Mary Frances Berry (Chair), and Cruz Reynoso (Vice-Chair), moved to intervene. The United States objected that neither the Commission nor its officers in their official capacity have the right to appear in litigation without the permission of the Attorney General, which they had not obtained. **[*352]** *See 28 U.S.C. § 516* ("Except **[**7]** as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General."). The district court summarily permitted the intervention. As the United States has not raised this issue on appeal, claiming "it has no practical effect upon the issues presented, since Wilson herself is entitled to defend against the government's complaint," we do not decide whether this intervention was permissible. The parties filed dispositive motions and on February 4, 2002, the district court issued an oral ruling granting Wilson's motion for summary judgment.

The district court concluded that "the 1994 Amendments Act . . . does not mandate regularly staggered terms. Rather, its plain language clearly requires that all Commissioners serve six-year terms, regardless of whether, as in this case, their predecessors completed their terms." Thus, under the district court's reading of the statute, Wilson would be entitled to serve a full six years, until January 12, 2006. The district court first found that the language of *42 U.S.C. § 1975*(c) **[**8]** "is perfectly clear. It contains no exceptions, qualifications, not for delayed appointments and not for appointments to fill unexpired terms." Second, the court noted that a staggering provision had been proposed, but not adopted by Congress in the 1994 Act. Third, the district court relied on the removal of the staggering and vacancy provisions from the 1983 Act, holding that "when Congress affirmatively deletes language which had been included in pre-existing legislation, then Congress means what it said."

Finally, the court rejected appellants' argument that failure to maintain staggering would undermine "the bipartisan nature of the Commission as well as its integrity and credibility." The court found "nothing to suggest that the absence of such a requirement would frustrate Congress' purpose." Although acknowledging that its ruling would eliminate "uniformly staggered terms," the court opined that its decision would not result in the "complete elimination of all staggering." Even so, the court reasoned that the "staggered term requirement was only one amongst a large constellation of protections that were introduced by the 1983 Act" and "all of these protections, except staggered **[**9]** terms, remain expressly included in the 1994 Act." The district court concluded that "if Congress believes that the regularly staggered terms should be among these protections, then, of course, it is free to make its intention explicit by including express language in the statute."

The United States and Kirsanow filed this appeal.

II. Analysis

This case involves a pure legal question of statutory interpretation. Our review of statutory interpretation by a district court is *de novo. See, e.g., Butler v. West, 334 U.S. App. D.C. 55, 164 F.3d 634, 639 (D.C. Cir. 1999).*

A.

We begin our analysis with the language of the statute. *See, e.g., Barnhart v. Sigmon Coal Co., Inc., 534 U.S. 438, 122 S. Ct. 941, 950, 151 L. Ed. 2d 908 (2002).* "Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Robinson v. Shell Oil Co., 519 U.S. 337, 340, 136 L. Ed. 2d 808, 117 S. Ct. 843 (1997)* (quoting *United States v. Ron Pair* **[*353]** *Enterprises, Inc., 489 U.S. 235, 240, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)).* **[**10]** In determining the "plainness or ambiguity of statutory language" we refer to "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *519 U.S. at 341* (citing *Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 477, 120 L. Ed. 2d 379, 112 S. Ct. 2589 (1992); McCarthy v. Bronson, 500 U.S. 136, 139, 114 L. Ed. 2d 194, 111 S. Ct. 1737 (1991)).*

The disputed provision, *42 U.S.C. § 1975*(c) provides: "The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994." Appellants contend, contrary to the district court's holding, that the language of the first sentence of § 1975(c) is ambiguous, as the expression "term of office" is subject to at least two plausible interpretations. Appellants concede that one very plausible interpretation of § 1975(c) is that advocated by Wilson and adopted by the district court: Each individual member of the Commission, however appointed, whenever appointed, **[**11]** is entitled to serve a six-year period of time - *i.e.*, the term runs with the person. Under this interpretation, each member of the Commission would receive a six-year term running from the date of her appointment. However, appellants argue that another plausible reading of § 1975(c) is that the first sentence establishes six-year terms of office, beginning and ending on fixed dates, irrespective of whether and when individuals are appointed to fill them. Under this reading, each member of the Commission must be assigned to a fixed, six-year 'slot' of time - *i.e.*, the term runs with the calendar. We agree with

appellants that the ambiguity in the first sentence of § 1975(c) permits either of the readings suggested.

As Attorney General Brewster explained more than a century ago, "there are two kinds of official terms." *Commissioners of the District of Columbia, 17 Op. Att'y Gen. 476, 476 (1882).* One kind of "term" refers to a *period of personal service*. In that case, "the term is appurtenant to the person." *Id*. Another kind of "term" refers to a *fixed slot of time* to which individual appointees are assigned. There, "the person is appurtenant to **[**12]** the term." *Id. at 479.* In other words, a "term of office" can either run with the person or with the calendar. As an example of the latter, Article II of the Constitution provides that the President shall hold office during a "Term of four Years." U.S. Const. Art. II, § 1, cl.1. Even before enactment of the Twentieth Amendment, which established specific dates for the end of the President's term, it was understood that presidential terms ran four years with the calendar, not four years with the person, regardless of whether an individual assumed office after his predecessor failed to serve out a full term. Thus, contrary to appellees' position, it is *not* clear that the expression "term of office . . . shall be 6 years" found in § 1975(c) is unambiguous. Indeed, far from it. The very appointment of Wilson by President Clinton to serve only the remainder of Judge Higginbotham's term demonstrates the ambiguity in the statutory provision calling for six-year "terms of office." The district court erred in holding that § 1975(c) unambiguously requires that all Commissioners be appointed for six years, regardless of whether their predecessors completed their terms. **[**13]** This error undermines the district court's judgment, because the remainder of its analysis rests on that erroneous premise as its point of departure.

**[*354]** B.

Finding that the expression "term of office" in *42 U.S.C. § 1975*(c) is ambiguous, we are left to resolve that ambiguity. In resolving the ambiguity, we consider the broader context of § 1975(c) and the structure of the 1994 Act as a whole, as well as the contextual background against which Congress was legislating, including relevant practices of the Executive Branch which presumably informed Congress's decision, prior legislative acts, and historical events. Finally, we explore the policy ramifications of the suggested interpretations of § 1975(c). Each of these considerations leads us to the conclusion that, in enacting the 1994 Act, Congress did not disrupt the staggering of terms of Commission members created in the 1983 Act. Therefore we hold that Wilson was appointed by President Clinton only to fill the unexpired term of Judge Higginbotham, as her commission indicates, and her service as a Commissioner terminated on November 29, 2001. As a result, Kirsanow, having been validly appointed to a vacant **[**14]** seat on the Commission on December 6, 2001, for a term expiring November 29, 2007, and having taken the oath of office, is a member of the United States Commission on Civil Rights.

1.

Appellants argue that in order to properly interpret *42 U.S.C. § 1975*(c) we must construe both of its two sentences together, rather than as separate and unrelated. Taken together, appellants contend that it is evident that the 1994 Act retained "fixed slots of time to which individual members of the Commission are 'appurtenant.'" The second sentence of *42 U.S.C. § 1975*(c) provides that the "term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994," under the 1983 Act. The "initial membership" of the Commission is defined as "the members of the United States Commission on Civil Rights on September 30, 1994," in other words, the members

then serving on the Commission pursuant to the 1983 Act. *42 U.S.C. § 1975*(b). Appellants argue that in maintaining the staggering of "initial terms" of the Commission, as inherently provided for **[**15]** by the second sentence of § 1975(c), the 1994 Act perpetuated a self-replicating system of staggered terms. New terms begin based on when the old, staggered terms end. Thus the structure created by Congress in 1983 and preserved in 1994 would automatically endure.

Appellees would have us read the two sentences of § 1975(c) as unrelated. According to appellees, the first sentence alone sets the term of office for six years, and the second sentence simply addresses the transitional issue of the terms of the "initial membership" of the Commission, allowing the existing members of the Commission to finish the terms to which they had been appointed. However, as discussed in Part II.A, *supra*, read alone, the first sentence of § 1975(c) is ambiguous. It is susceptible to an interpretation that each member appointed to the Commission receives six years from her date of appointment, regardless of whether her predecessor left office early, and regardless of whether there was a delay in her appointment. This is the interpretation urged by the intervenors. This interpretation would not only grant Wilson a full six-year term, it would effectively extend the terms of others on the Commission. **[**16]** Yet, an equally plausible interpretation is that terms of the Commissioners run for six years with the calendar. Rather than counting from the date of appointment, the six years of members' term are counted from the expiration of their predecessors' term. This is the common practice of the Executive Branch in making appointments to staggered **[*355]** boards and commissions. *See, e.g.*, Office of Legal Counsel, Department of Justice, Memorandum for the Executive Clerk, "Term of a Member of the Mississippi River Commission," at 1 (May 27, 1999) (observing that "to preserve the staggering required by statute, each member may serve only until the passage of the specified number of years calculated from the expiration of his predecessor's term, even if the member's confirmation and appointment take place after that prior term has expired"). Thus, despite any delay in appointment, a Commissioner's term would expire six years from the day her predecessor's expired. Both are six year terms - the question is which Congress intended here.

Reading the first sentence of § 1975(c) together with the second sentence, the latter provides an "anchor" - fixed times for terms of Commissioners to expire, **[**17]** based on the "terms of each member of the Commission in the initial membership of the Commission." It is "a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132, 146 L. Ed. 2d 121, 120 S. Ct. 1291 (2000)* (quoting *Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809, 103 L. Ed. 2d 891, 109 S. Ct. 1500 (1989))*. Thus, it is a more faithful construction of § 1975(c) to read it as a whole, rather than as containing two unrelated parts. It is the "classic judicial task" of construing related statutory provisions "to 'make sense' in combination." *United States v. Fausto, 484 U.S. 439, 453, 98 L. Ed. 2d 830, 108 S. Ct. 668 (1988)*. The second sentence does indeed address the transitional issue of the terms of the "initial membership," but in doing so, it also creates a pattern of staggered appointments. Staggered terms must run with the calendar, rather than with the person, to preserve staggering. Thus, taken with the history and background against which Congress was **[**18]** legislating, discussed *infra*, it simply makes more sense to read § 1975(c) as creating terms of office running with the calendar from the date of expiration of a predecessor's term. That being the case, any appointment to fill a vacancy for an unexpired term, such as Ms. Wilson's appointment, must only be for the duration of that unexpired term. For it to be otherwise would disrupt the fixed and staggered six-year terms that run with the calendar.

At oral argument, we raised with counsel for appellees the question of the effect of their proffered interpretation, as adopted by the District Court, on the terms of those members who, like Berry and Reynoso, were appointed to succeed commissioners who had served their full terms, when the successor did not take office until the lapse of some period of time after the termination of the prior commissioner's service. Counsel argued for a two-track application of the statute, contending that when an appointee's predecessor had served out her full term, but there was a delay in the nomination of the new appointee, that new appointee could permissibly serve less than a full six years, because such a discrepancy was only minor. However, **[**19]** when the appointee is replacing a predecessor who had failed to serve out a full term, such as here, the new appointee should serve a new, full six years from the date of her appointment. This anomalous result further undermines appellee's interpretation of the statute. We have difficulty believing that Congress *sub silentio* created two different tracks with full six-year terms for those commissioners who succeeded appointees who by reason of death or resignation did not serve out their full terms, but truncated **[*356]** terms for those who succeeded members who served for six years but whose vacancy was not immediately filled by presidential appointment. Nothing in section 1975(c) gives any indication that the phrase "the term of office of each member of the Commission" has two different meanings for two distinct classes of commissioner not otherwise recognized in the statute. The lack of such differentiation and appellee's concession that "delayed appointees" serve terms shortened by the interval between the expiration of their predecessors' term and the date of their appointment further supports our interpretation that, read together, the two sentences of § 1975(c) create fixed six-year **[**20]** terms that run with the calendar.

Our interpretation is consistent with widely held traditional understandings of statutes defining terms of office. The second edition of *American Jurisprudence* notes that "where both the duration of the term of an office and the time of its commencement or termination are fixed by a constitution or statute, a person elected or appointed to fill a vacancy in such office holds for the unexpired portion of the term . . . ." 63C Am. Jur. 2d *Public Officers and Employees* § 148 (1997). The controversy before us involves just such a term of office. The first sentence of § 1975(c) fixes the duration of the term: six years. The second sentence of § 1975(c) fixes the time of termination: the terms of the initial members expire at dates determinable from preexisting law. It is thus unsurprising that President Clinton issued a commission appointing appellee Wilson "for the remainder of the term expiring November 29, 2001." Reading § 1975(c) as a whole, we conclude that it creates fixed six-year terms of office that run with the calendar, rather than with the person. Thus, having been appointed to fulfill the remainder of Judge Higginbotham's term, **[**21]** expiring November 29, 2001, Wilson's time on the Commission is up.

2.

Our interpretation of § 1975(c) is further confirmed by background considerations such as relevant practices of the Executive Branch. Congress is presumed to preserve, not abrogate, the background understandings against which it legislates. *See, e.g., Bennett v. Spear, 520 U.S. 154, 163, 137 L. Ed. 2d 281, 117 S. Ct. 1154 (1997); Norfolk Redev. & Hous. Auth. v. Chesapeake & Potomac Tel. Co., 464 U.S. 30, 35, 78 L. Ed. 2d 29, 104 S. Ct. 304 (1983).* "Longstanding practices" of the Executive Branch can "place[] a 'gloss' on Congress's action in enacting" a particular provision. *Ass'n of Civilian Technicians v. FLRA, 269 F.3d 1119, 1122 (D.C. Cir. 2001).* Here the consistent treatment of appointments by the Executive Branch provides such a "gloss."

Neither the 1983 Act nor the 1994 Act explicitly addressed delays in appointments of members *after* a predecessor's term had expired. Yet, it appears that every presidential appointee to the Commission since 1983 has been appointed to a term of office expiring six years from the date her predecessor's term expired. **[**22]** Even after the passage of the 1994 Act, with the changes appellees claim it made to the "terms of office," President Clinton appointed no less than four members to the commission for terms of less than six years. Three of these were delayed appointments, and the fourth is Victoria Wilson. Congress has reappropriated funds for the Commission, effectively reauthorizing it, each year since it was supposed to terminate in 1996, and yet it has not once suggested that the Executive Branch's implementation of the law was incorrect. It is not that the President's "interpretation" of **[*357]** *42 U.S.C. § 1975*(c) is due deference, as suggested by appellants, but rather that the Executive Branch's interpretation of the law through its implementation colors the background against which Congress was legislating. Congress is presumed to be aware of established practices and authoritative interpretations of the coordinate branches. *E.g. National Lead Co. v. United States, 252 U.S. 140, 147, 64 L. Ed. 496, 40 S. Ct. 237 (1920)* ("Congress is presumed to have legislated with knowledge of such an established usage of an executive department of the government."); *Lorillard v. Pons, 434 U.S. 575, 580, 55 L. Ed. 2d 40, 98 S. Ct. 866 (1978);* **[**23]** *In re North, 311 U.S. App. D.C. 71, 50 F.3d 42, 45 (D.C. Cir. 1995)* (Special Division). Here the Executive Branch's consistent practice provides a presumptive default.

Similarly, the practice of appointing members to the Commission on Civil Rights is but an example of what has been the unbroken position of the Attorney General and the Justice Department on executive appointments. As noted in an opinion issued by the Office of Legal Counsel on May 27, 1999, *Term of a Member of the Mississippi River Commission*:

> Ordinarily, when a statute provides for an appointee to serve a term of years, the specified time of service begins with the appointment. *Case of Chief Constructor Easby, 16 Op. Att'y Gen. 656 (1880). A different rule generally applies to commissions whose members have staggered terms.* There, to preserve the staggering required by statute, each member may serve only until the passage of the specified number of years *calculated from the expiration of his predecessor's term*, even if the member's confirmation and appointment take place after that prior term has expired.

(Emphasis added.) This latter rule has been consistently **[**24]** applied to executive appointments to the Commission on Civil Rights both in its previous incarnation under the 1983 Act and as constituted under the 1994 Act. Appointments have run six years from the date of the expiration of a predecessor's term - not from the date of appointment. n1 It is of course possible that the consistent practice of Presidents Clinton and Bush in appointing members of the Commission has been consistently wrong. However, we do not agree with appellee's interpretation compelling that conclusion. Rather, we hold that Presidents Clinton and Bush have it right. That is, the 1983 Act clearly intended to create staggering. The 1994 Act preserved this structure by providing for six-year terms with the terms of the initial commissioners expiring according to their commissions under the 1983 Act.

n1 At oral argument we requested information on Congress's own practices in making appointments to the Commission. The information appellees have provided shows that, unlike the Executive Branch, Congress has been inconsistent in its appointments under *both* the 1983 Act and the 1994 Act, generally failing to indicate termination dates for appointees, and on one occasion indicating the appointment was to run six years from the date of appointment. *See* 142 Cong. Rec. H1233-06 (1996) (Reappointment of Carl Anderson). Most recently however, the Speaker of the House appointed Abigail Thernstrom on January 6, 2001. *See* 147 Cong. Rec. H46-02 (2001). Thernstrom's initial appointment was apparently only to fill the remainder of a vacant seat, because she was reappointed by the Speaker, without objection, to the Commission "for a 6-year term beginning on February 12, 2002." *See* 148 Cong. Rec. H229-09 (2002). This most recent action by the House of Representatives is consistent with our interpretation of the statute.

**[**25]**

Furthermore, the consistent practice of the Executive Branch with respect to the filling of midterm vacancies on other bodies with staggered term members has been **[*358]** to fill those vacancies for the duration of the unexpired term, preserving the staggering of terms. That this practice has been longstanding is illustrated by a dispute in the 19th century remarkably similar to the case at bar. In 1882, the Attorney General was asked by the President for his opinion of the term of office of a Commissioner of the District of Columbia who had been appointed after his predecessor failed to serve out a full term. *See Commissioners of the District of Columbia, 17 Op. Att'y Gen. 476, 476 (1882).* The governing statute provided for staggering with respect to the initial appointment of the two Commissioners, but was silent about both subsequent appointments and the filling of vacancies. Nonetheless, the Attorney General concluded that a Commissioner appointed to fill a vacancy could serve only for the remainder of his predecessor's unexpired term. As noted in Part II.A, *supra*, the Attorney General distinguished between terms running with the person and terms running with the **[**26]** calendar. He concluded that there must be "some apt expression of . . . intent" to create the latter kind of term, and found such an "apt expression" from the initial staggering of terms. *Id. at 477.* Were it to be otherwise, the staggering of the Commission would deteriorate, and frustrate Congress's purpose in establishing staggering in the first place. *See id. at 477-78.* He concluded that "the fact that no express provision is made for filling vacancies which might arise by death or resignation is not significant." *Id. at 478.* In appointing Victoria Wilson for the remainder of Judge Higginbotham's term of office, President Clinton was following an established Executive Branch practice which was known to Congress. Had Congress intended to disrupt the staggering of members in its 1994 reauthorization of the Commission on Civil Rights, it could have affirmatively indicated that was its intent.

Appellee Wilson argues that if we held that each member of the Commission receives a six-year term of office running from the date of their appointment, her appointment, though reflected in her commission as "for the remainder of the term expiring **[**27]** November 29, 2001," would be effective as a six-year appointment expiring on January 12, 2006. In support of this proposition appellees cite *Quackenbush v. United States, 177 U.S. 20, 27, 44 L. Ed. 654, 20 S. Ct. 530 (1900),* which notes in passing that "the terms of [a] commission cannot change the effect of the appointment as defined by . . . statute." That may be. But arguably Wilson may not have been validly *appointed* in the first instance. n2 It seems intuitive, as a matter of separation of powers, that the language of a nomination, confirmation, and commission cannot alter a statutory term, since it is

given to Congress "under its legislative power" to "establish[] . . . offices, the determination of their functions and jurisdiction, the prescribing of reasonable and relevant qualifications and rules of eligibility of appointees, and *the fixing of the term for which they are to be appointed* and their compensation - all except as otherwise provided by the Constitution." *Myers v. United States, 272 U.S. 52, 129, 71 L. Ed. 160, 47 S. Ct. 21 (1926)* (Taft, C.J.) (emphasis added). Indeed, this appears to be the position of the Department **[**28]** of Justice. *See, e.g.*, Office of Legal Counsel, Department of Justice, Memorandum **[*359]** for the Executive Clerk, "Term of a Member of the Mississippi River Commission," at 2 (May 27, 1999); *Case of Chief Constructor Easby, 16 Op. Att'y Gen. 656, 657 (1880).*

> n2 Wilson accepted her commission from President Clinton with it expressly stating that it was "for the remainder of the term expiring November 29, 2001." Subsequently she failed to challenge the terms of her commission prior to its expiration. Therefore she is arguably bound by those terms, and estopped from asserting an alleged violation of *42 U.S.C. § 1975*(c). However, given our resolution, we need not decide.

However, we are not considering an attempt by a President to intentionally circumvent a statute. Nor is this a case of mere scrivener's error. Rather, it is clear that President Clinton intended to appoint Wilson to the *remainder of a term* and not to a full six-year term, a position he reasonably believed **[**29]** existed. Were we to read the statute as prohibiting appointments to the remainder of a term then either Wilson's appointment must be to a six-year term, or alternatively, it was to a non-existent position - the remainder of a term - raising a question as to the validity of her appointment in the first instance. It could be seen as an attempt by the President to appoint Wilson to a position that did not exist. In that case Wilson would never have been a valid member of the Commission in the first instance. However, because we read the statute as preserving staggering and thus permitting the appointment of Wilson to the remainder of a term of office, that problem need not concern us. As a result, Wilson's appointment by President Clinton was valid, but her term of office has subsequently expired.

3.

In addition to Executive Branch practices implementing a statute, background considerations, or "context," include related provisions in historically antecedent statutes. *E.g. Dep't of Commerce v. U.S. House of Rep., 525 U.S. 316, 339-40, 142 L. Ed. 2d 797, 119 S. Ct. 765 (1999).* We need not rely on legislative history, of which there is little of relevance, to determine **[**30]** that staggering of terms was an important feature of the 1983 Act - the plain text and the historical events surrounding the 1983 reauthorization of the Commission demonstrate that fact. Congress went to great lengths to put various structural features in place to preserve the independence, autonomy, and non-partisan nature of the Commission. Clearly staggering was one of those features. *See* Pub. L. No. 98-183 § 2(b)(2), (3), 97 Stat. 1301 (1983). The 1983 Act was enacted at a time when Congress was responding to President Reagan's decision to remove and replace first two, then a total of five, members of the Commission. *See* Congressional Research Service, Tenure of Members of the Civil Rights Commission, Memorandum to House Subcommittee on the Constitution, at 2-3, 5 (Dec. 14, 2001). Thus it is evident that in staggering the membership (among other features), Congress was insulating the Commission from carte blanc replacement at any given time. To suggest that Congress abolished this practical structural feature without any indication that it

intended to - evidenced by the fact that the Clinton and Bush Administrations continued to treat the Commission as a body with staggered **[**31]** membership - presents a highly improbable scenario. There is no evidence in or external to the 1994 Act that Congress meant to disrupt the system it had meticulously put into motion.

Appellees suggest that we can deduce Congress's intent to alter the terms of office created by the 1983 Act because the original version of the bill introduced in the House of Representatives to reauthorize the Commission provided that "the current staggering of terms shall continue in effect." H.R. 4999 § 2(c), 103d Cong. (1994). Appellees contend that the removal of this language demonstrates that Congress intended to disrupt the staggering created by the 1983 Act. However, it is at least equally plausible that Congress considered such language simply unnecessary **[*360]** in light of the addition of the provision that the terms of "initial" members "shall expire on the date such term would have expired as of September 30, 1994." *42 U.S.C. § 1975*(c). This language demonstrates that Congress intended to preserve the structure created under the 1983 Act.

Indeed, Congress used virtually the exact same language in defining the six-year term of office in both the 1983 and 1994 Acts: "The **[**32]** term of office of each member of the Commission shall be 6 years." *42 U.S.C. § 1975*(c); Pub. L. No. 98-103 § 2(b)(2). n3 If anything this suggests that "term of office" retains the same meaning as it did in 1983. Since there is apparently no dispute that under the 1983 Act a "term of office" ran with the calendar, that same understanding would apply to the 1994 Act.

n3 The only difference is that the 1983 Act spelled out "six."

Appellees' strongest argument that Congress intended to alter the structure of the Commission in adopting the 1994 Act is that it eliminated the provision providing that "any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed." Pub. L. No. 98-103 § 2(b)(2)(B). This argument is not without force. As this Court has recognized: "Where the words of a later statute differ from those of a previous one on the same or related subject, the Congress must have intended them to have a different meaning." *Muscogee (Creek) Nation v. Hodel, 271 U.S. App. D.C. 212, 851 F.2d 1439, 1444 (D.C. Cir. 1988).* **[**33]** Further, there are numerous statutes creating boards and commissions that expressly provide for filling vacancies. However, here we have not a new agency, but a Commission that Congress had *already* established and was merely reauthorizing. In the process Congress removed provisions pertaining to the initial staggering of the Commission which also included the vacancy provision. What that leaves is not different words, as in *Muscogee (Creek) Nation*, but rather silence. And not just silence, but silence coupled with ambiguous terms, well-established practices of the Executive Branch, and the perpetuation of a staggered board in the 1994 Act by providing that the terms of "initial" members "shall expire on the date such term would have expired as of September 30, 1994," under the 1983 Act. Had Congress intended to change the established practice for appointing members of the Commission on Civil Rights, it could have affirmatively indicated its intent to do so. It did not. "Congress is unlikely to intend any radical departures from past practice without making a point of saying so." *Jones v. United States, 526 U.S. 227, 234, 143 L. Ed. 2d 311, 119 S. Ct. 1215 (1999).* **[**34]** These contextual considerations lead us to the conclusion that the 1994 Act maintained the structure of the Commission as reauthorized in 1983, and thus Wilson was appointed to fill an unexpired term, rather than to a new term of her own.

4.

Finally, we observe that our interpretation, unlike that urged by appellees, avoids anomalous results. As noted above, the creation of staggered terms was one of several structural features adopted in the 1983 Act to establish the Commission as an independent, bipartisan entity, to insulate it from political influence, and to protect its integrity and credibility. The district court contended that its decision would not result in "the complete elimination of all staggering," but acknowledged that its decision would result in the "absence of uniformly staggered terms." The district court further contended that "there is little, if any, substantive difference **[*361]** between those two." We disagree. There is a substantial difference in having predictable terms ensuring that membership will turn over in a periodic and foreseeable manner, and having unpredictable vacancies that permanently disorder member terms. Not the least difference is the diffusion **[**35]** of appointment authority across presidential administrations. Moreover, there is no apparent reason Congress would originally create fixed, staggered terms, as it did under the 1983 Act, only to have them become unpredictably de-staggered over time as some members of the Commission resign, retire, are removed, or die.

Even more telling is the fact that the construction urged by appellees would invite the very sort of political manipulation leading to the reorganization of the Commission in 1983. For example, de-staggering could arise from concerted resignations near the end of a President's term, allowing an outgoing President to appoint several members of the Commission at once, precluding his successor from appointing any members of the Commission. Such "absurd results" are strongly disfavored. *Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575, 73 L. Ed. 2d 973, 102 S. Ct. 3245 (1982).* Congress was attempting to insulate the Commission from this kind of carte blanc replacement at any given time. Appellees have no argument as to why these same policy considerations were no longer relevant in 1994 when Congress reauthorized the Commission. The absence of any **[**36]** policy justification for the construction urged by appellees provides yet an additional reason to conclude that Congress, when it established the "initial membership" of the Commission in the 1994 Act, *see 42 U.S.C. § 1975*(c), preserved the staggering it had set in motion in the 1983 Act, and did not intend for the benefits of that provision to be destroyed as some future appointees, either because of random events or strategic behavior inevitably failed to serve out their terms.

III. Conclusion

Since the founding of the republic presidential appointees and their commissions have been a source of litigation, if not consternation. *See, e.g., Marbury v. Madison, 5 U.S. (1 Cranch) 137, 154, 2 L. Ed. 60 (1803).* Here Wilson's commission corresponds to the terms of the statute pursuant to which she was appointed a member of the United States Commission on Civil Rights - *42 U.S.C. § 1975.* Part (c) of § 1975 provides that the "term of office of each member of the Commission shall be 6 years." The district court erred in holding that this provision unambiguously requires all Commissioners be appointed for six years, **[**37]** regardless of whether their predecessors completed their terms. Rather, § 1975(c) is also susceptible to the entirely reasonable interpretation that it establishes fixed terms of six years for members of the Commission - terms that run with the calendar - regardless of delay in appointment or the filling of mid-term vacancies. Having considered the two sentences of § 1975(c) in conjunction, practices of the Executive Branch in making appointments to this Commission and other bodies, the prior legislation, and the policy ramifications of the suggested interpretations of § 1975(c), we hold that the latter interpretation is correct. In enacting the 1994 Act, Congress did not disrupt the staggering of terms of Commission

members created in the 1983 Act. Therefore, mid-term vacancies are to be filled only for the remainder of the unexpired term. Wilson was properly appointed by President Clinton only for the remainder of the unexpired term of Judge Higginbotham, as her commission indicates, and her service as a Commissioner terminated on November **[*362]** 29, 2001. Kirsanow, having been validly appointed to a vacant seat on the Commission, and having taken the oath of office, is a member of the **[**38]** United States Commission on Civil Rights "with all the powers, privileges, and emoluments thereunto of right appertaining and has been since December 6, 2001. We reverse the district court and remand with instructions to enter summary judgment for the United States and Kirsanow. It is

*So ordered.*

# IV. Legislation

## A. Legislative History

### Civil Rights Act of 1957 - Amended By:

Mutual Security Appropriation Act, 1960. 73 Stat. 717, Pub. Law 86-383, Sept. 28, 1959; Amendment in sec. 401 at 73 Stat. 724

Civil Rights Act of 1960. 74 Stat. 86, Pub. Law 86-449, May 6, 1960; Amendment in title IV at 74 Stat. 89

Civil Rights Act of 1960. 74 Stat. 86, Pub. Law 86-449, May 6, 1960; Amendment in title VI at 74 Stat. 90

Departments of State and Justice, the Judiciary, and Related Agencies Appropriation Act, 1962. 75 Stat. 545, Pub. Law 87-264, Sept. 21, 1961; Amendment in title IV at 75 Stat. 559

Civil Rights Commission, extension. 77 Stat. 271, Pub. Law 88-152, Oct. 17, 1963; Amendment in sec. 2 at 77 Stat. 271

Civil Rights Act of 1964. 78 Stat. 241, Pub. Law 88-352, July 2, 1964; Amendment in title V at 78 Stat. 249

Civil Rights Commission, extension. 81 Stat. 582, Pub. Law 90-198, Dec. 14, 1967; Amendment in sec. 1, 2 at 81 Stat. 582

Civil Rights Commission, appropriations. 84 Stat. 1356, Pub. Law 91-521, Nov. 25, 1970; Amendment at 84 Stat. 1356

Civil Rights Commission, appropriation. 85 Stat. 166, Pub. Law 92-64, Aug. 4, 1971; Amendment at 85 Stat. 166

Civil Rights Commission, witness fees. 86 Stat. 813, Pub. Law 92-496, Oct. 14, 1972; Amendment at 86 Stat. 813

Civil Rights Commission Authorization Act of 1976. 90 Stat. 524, Pub. Law 94-292, May 27, 1976; Amendment in sec. 2 at 90 Stat. 524

Civil Rights Commission Authorization Act of 1977. 91 Stat. 1157, Pub. Law 95-132, Oct. 13, 1977; Amendment in sec. 2 at 91 Stat. 1157

Civil Rights Commission Act of 1978. 92 Stat. 1067, Pub. Law 95-444, Oct. 10, 1978; Amendment in sec. 2-7 at 92 Stat. 1067

Civil Rights Commission Authorization Act of 1979. 93 Stat. 642, Pub. Law 96-81, Oct. 6, 1979; Amendment in sec. 2, 3 at 93 Stat. 642

Civil Rights Commission Authorization Act of 1980. 94 Stat. 1894, Pub. Law 96-447, Oct. 13, 1980; Amendment in sec. 2 at 94 Stat. 1894

### U.S. Commission On Civil Rights Act of 1983 – Amended By:

United States Commission on Civil Rights Act of 1983 aka Civil Rights Commission Act of 1983 - Amended By:

Civil Rights Commission Reauthorization Act of 1989. 103 Stat. 1325, Pub. Law 101-180, Nov. 28, 1989; Amendment in sec. 2 at 103 Stat. 1325

United States Commission on Civil Rights Reauthorization Act of 1991. 105 Stat. 1101, Pub. Law 102-167, Nov. 26, 1991; Amendment in sec. 2-5 at 105 Stat. 1101

United States Commission on Civil Rights Authorization Act of 1992. 106 Stat. 1955, Pub. Law 102-400, Oct. 7, 1992; Amendment in sec. 2 at 106 Stat. 1955

Civil Rights Commission Amendments Act of 1994. 108 Stat. 4338, Pub. Law 103-419, Oct. 25, 1994; Amendment in sec. 2 at 108 Stat. 4338

## B. 1983 Act

### 1. 101 P.L. 180

### i. Text of 101 P.L. 180

UNITED STATES PUBLIC LAWS
101ST CONGRESS-FIRST SESSION


PUBLIC LAW 101-180 [H.R. 3532]
NOVEMBER 28, 1989
CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

*101 P.L. 180; 103 Stat. 1325; 1989 Enacted H.R. 3532; 101 Enacted H.R. 3532*

BILL TRACKING REPORT: 101 Bill Tracking H.R. 3532
FULL TEXT VERSION(S) OF BILL: 101 H.R. 3532
CIS LEGIS. HISTORY DOCUMENT: 101 CIS Legis. Hist. P.L. 180

An Act

To extend the United States Commission on Civil Rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1]
SECTION 1. <*42 USC 1975* note> SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1989.".

[*2]
SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975* et seq.) is amended --
(1) in section 7 *(42 U.S.C. 1975e)*, by striking "1989" and inserting "1991"; and

(2) in section 8 *(42 U.S.C. 1975f),* by striking "six years after its date of enactment" and inserting "on September 30, 1991".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

## ii. 135 Cong Rec H 8618: House of Representatives Debate on Civil Rights Commission Reauthorization Act of 1989, 101 P.L. 180

LEXSEE 135 Cong Rec H 8618

Congressional Record -- House

Tuesday, November 14, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8618*

REFERENCE: Vol. 135 No. 159

TITLE: THE CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. EDWARDS of California; Mr. GEKAS; Mr. MOORHEAD; Mr. SENSENBRENNER

TEXT: [*H8618] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3532) to extend the United States Commission on Civil Rights.

The Clerk read as follows:

H.R. 3532

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "The Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 is amended --

(1) in section 7, by striking "1989" and inserting "1990"; and

(2) in section 8, by striking "six years after its date of enactment" and inserting "on May 31, 1990".

SEC. 3. STAFF DIRECTOR.

Section 6(a)(1) of the United States Commission on Civil Rights Act of 1983 is amended by striking "the President with the concurrence of a majority of".

PARLIAMENTARY INQUIRIES

Mr. GEKAS. Mr. Speaker, point of parliamentary inquiry. It is my understanding that the gentleman from California had withdrawn the motion to consider the very bill which he now brings to the desk again. What is the difference between the original motion made and then withdrew and the presentation of the matter as it now obtains?

The SPEAKER pro tempore. The original motion was with an amendment. The bill presently before the House is as introduced originally.

Mr. SENSENBRENNER. Mr. Speaker, further parliamentary inquiry, does not the gentleman's motion to suspend the rules include the amendment that was adopted by the Committee on the Judiciary this morning?

Mr. EDWARDS of California. That was correct, the first motion.

Mr. SENSENBRENNER. And a further parliamentary inquiry, the motion to suspend the rules contains the provision that takes away the power of the President to appoint the staff director of the Commission invested in the Commission itself?

Mr. EDWARDS of California. Is that a parliamentary inquiry to me, Mr. Speaker?

The SPEAKER pro tempore. The Chair can only answer that the bill offered for passage under the pending motion is the bill as introduced and referred to committee.

Mr. SENSENBRENNER. I thank the Chair.

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from California [Mr. Edwards] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. Gekas] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, H.R. 3532 simply buys Congress more time, 6 months, to address the future of the Civil Rights Commission. If we do not extend the Commission [*H8619] for 6 months, the Commission will die on November 30, 1989.

The Subcommittee on Civil and Constitutional Rights, which I chair, began reauthorization hearings in April, 1989. There was clear consensus then, from Members on both sides of the asile, that this Nation needs a strong, independent, credible and effective Civil Rights Commission. But no one then had an effective plan of how to bring this about.

It was not until October that proposals were finally introduced on the Commission's future. Four proposals have been introduced within the last month, and all deserve careful and respectful study.

The President asked Congress, in June, to join him in a new partnership to reauthorize the Civil Rights Commission, with the goal of launching a renewed civil rights mission. But he did not present a proposal until November 8, last week.

The White House proposal does not address the serious financial and administrative management problems found by the GAO in 1986, and never acted upon by the Commission. The White House proposal simply extends the Commission for 6 more years.

Like the other proposals, the White House proposal will be carefully considered by the Subcommittee as soon as we return after the recess. But it should not be rammed through in the closing rush of Congress.

I received a letter last week from the White House, dated November 7. The President's Chief of Staff, Governor John Sununu, indicated that the President is troubled by the contentious nature of the Commission in recent years.

I, too, have been troubled by this contentiousness. But the problems and troubles of the Commission extend beyond contentious meetings and conflicting personalties. The Commission has been troubled by management problems which have not been addressed.

In the mid 1980's, allegations were raised regarding administrative and financial mismanagement at the Commission. The General Accounting Office reported its findings of mismanagement to the Congress in 1986, yet the Commission has taken no actions to address the troubling issues raised by the GAO.

The Commission has been without a permanent staff director since 1986. The President has authority to appoint the staff director, but has not done so. I was hopeful that upon taking office the President would have appointed a permanent staff director, as a critical first step toward revitalizing the Commission.

It would not be good public policy to extend the Commission for a substantial period of time, such as 6 years, without addressing fundamental problems at the Commission. A 6-year extension, as proposed by the White House, does not address these problems.

A number of interesting proposals have been introduced in the last month, including one from the gentleman from Wisconsin. These proposals merit careful consideration by the Congress, but this cannot be accomplished in the closing days of the session.

Finally, Governor Sununu claims that the President will not be able to attract top quality people to serve on the Commission for only 6 months.

But this differs from the facts. A number of prominent and well qualified Americans have already indicated their eagerness to serve as members of the Commission as Presidential appointees. A 6-month extension gives the President the opportunity to appoint these people to the Commission.

I am pleased to note that this bill, the 6-month extension, is endorsed by the Leadership Conference on Civil Rights, a coalition of 185 national civil rights organizations.

This will be our only chance to vote on whether to continue the Civil Rights Commission. I urge my colleagues to vote for this short term extension. Don't vote to kill the Commission.

Mr. GEKAS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. Sensenbrenner].

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, on November 8 of last week the Washington Post ran a five-column headline that reads, "Bush Accuses Congress of Blocking Everything I Try to Do."

Here we are, at 8:21 in the evening before an empty Chamber, and the majority party is attempting to thwart the will of the President of the United States again.

Let the record be clear: this motion to suspend the rules is not the bill that was reported from the Committee on the Judiciary this morning which extended the life of the Civil Rights Commission for 6 months. It adds one extra element, and that is that it transfers the power to appoint the staff director of the Civil Rights Commission from the Office of the President of the United States and places it in the hands of the Commission.

If that will not guarantee that this bill will be vetoed, I do not know what will.

So this is an attempt to further politicize a Commission that has been very contentious for the past several years. It is a move purely and simply designed to ensure failure for President Bush's first Commission on Civil Rights.

Now, let us look at what has been going on in the Civil Rights Commission. The Commission was reauthorized 6 years ago, in 1983. Four of the members of the Commission were appointed by the President without confirmation by the Senate, and one member each of the Commission was appointed by the majority and minority leaders of both the Senate and the House of Representatives, for a total of eight members of the Commission.

The Commission has denigrated itself into personal name calling, and contentious backbiting so that it has become a laughing stock in the Nation, and is a waste of the taxpayers' money.

Both Republicans and Democrats have joined to significantly reduce the funding of the Commission. If this Commission continues the way it is going, it deserves to die a peaceful death when its present lease on life expires on November 30, 1989.

The terms of four of the members of the Commission expire within the next month. With a 6-month extension, it will be impossible for the President, the Senator from Kansas, [Mr. Dole], and the Republican leader, the gentleman from Illinois [Mr. Michel], to find qualified persons willing to serve for this short period of time while the fate of the Commission rests in the hands of Congress.

Furthermore, there is no permanent staff director in the Commission. It will be even harder to find someone to do those managerial improvements that the gentleman from California [Mr. Edwards] and I both agree are essential if this Commission is to get back on track and serve a useful purpose, advancing the cause of civil rights in this country.

All Members have known that the life of the Civil Rights Commission exprise on November 30, and it is at this late hour that a move is made in Congress to suspend the rules and pass a bill that will continue all of the problems that we have been discussing for another 6 months while the Commission's members and while the Commission's mission are left dangling to the winds that blow in this U.S. Capitol Building.

Mr. Speaker, it is for this reason that the Chief of Staff at the White House, Governor Sununu, wrote the gentleman from California [Mr. Edwards] and myself, stating that the President is opposed to a 6-month extension.

Governor Sununu's letter reads in part:

The administration would be unable to attract the qualified kind of individuals the President seeks to serve on the Board, given the uncertainty associated with the 6-month reauthorization. We view such a short reprieve as a hollow gesture that constitutes a disservice to the Commission and to the cause of civil rights in this Nation, while merely delaying a decision we should be prepared to make today.

The administration has come out in favor of a 6-year reauthorization of the Commission, leaving the appointment structure the same as it is now.

[*H8620] While I would prefer that all of the Members of the Commission be presidential appointees with Senate confirmation, I am willing to yield to this desire on the part of the White House.

The White House also would like to make sure that the Commission can start afresh and that none of the existing members of the Commission who have contributed so greatly to the backbiting and personal bickering and the disgrace that has come upon this Commission will be on a reconstituted Commission.

So I have an amendment which I would have offered had this bill not come up in a nonamendable from to reauthorize the Commission for 6 months, to have a 1-day gap so that the terms of the holdover commissioners would expire and all the members of the Commission would start afresh beginning on December 2, and to provide a savings clause so that the Civil Service employees would be transferred from the old Commission to the new Commission without losing their jobs.

If we really want to stop a hemorrhage of the managerial mismanagement, the backbiting and the waste of taxpayers' money that this Commission has gotten itself so unfortunately and regrettably involved in, then the motion to suspend the rules by the gentleman from California [Mr. Edwards] should be defeated when it comes up for a vote.

If we really want to depoliticize this Commission, the worst thing in the world to do would be to turn the power of appointment of the staff director from the President to the Commission itself, because this will certainly result in a veto of the bill, and then there will be no Commission, we will have a lot of ill will when we start afresh looking at what to do about this Commission, and it would be better to stop the ill will now, once and for all, by defeating this motion to suspend the rules.

Mr. GEKAS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Moorhead].

Mr. MOORHEAD. Mr. Speaker, I am concerned about what is happening to the Civil Rights Commission. I believe that our country needs a strong and effective Commission to guarantee the civil rights of the people of this country.

Certainly this 6-month extension guarantees that we will not have an effective Commission over the next 6-month period. We will only be continuing the problems that exist there at the present time.

After the month of December there will be only four members of the Commission that remain. The other terms will have expired.

The administration strongly supports a 6-year extension of the Civil Rights Commission, time enough to have an opportunity to work out the commitment of this President to civil rights.

The bill does not even give him a chance to succeed. It would be impossible over a short period of 6 months to get people who would serve on the Commission, who would actually take time away from their employment to do the kind of work that is necessary if the Civil Rights Commission is to be effective.

Mr. Speaker, I urge a "no" vote on H.R. 3532 and urge my colleagues to support the administration's proposal when it is allowed to be offered to reauthorize the Commission for 6 years with the 1-day gap to relieve the current Commissioners and staff director of their duties.

Let us give the President a chance to make a difference in civil rights.

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me point out to my colleagues that the life of the U.S. Commission on Civil Rights expires. The Commission dies in 2 weeks unless this bill is passed. A "no" vote on this bill that we have before us tonight is a vote to kill the U.S. Commission on Civil Rights.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have seen this happen quite often during the time I have been in the Congress of the United States with a Republican President, Reagan and now Bush, it seems that the Congress time and time again in so many fields has forgotten or is willing to ignore the fact that those individuals were elected by a majority of the people of the United States to be President, not just to occupy the White House but to give them the fundamental power of appointment to the courts, to the commissions, to the various functions that the President has the duty to fill through the power of appointment.

Here we have, again, a supreme example of the majority party in the House attempting to defy the President, rob him of that inherent constitutional power of appointment, which ironically the Congress conferred on him in the first place with respect to the Civil Rights Commission.

Here is an opportunity for us to sit down again with a "no" vote on this suspension tomorrow or however we can set this aside and allow a proper process to allow the President of the United States to do the duty for which he was elected by a majority of the people of the United States and not to allow the Congress to meddle with that any further.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Bilbray). The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and pass the bill, H.R. 3532.

The question was taken; and on a division (demanded by Mr. Sensenbrenner) there were -- ayes 4, noes 3.

Mr. EDWARDS of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed until tomorrow.

## iii. 135 Cong Rec S 15920: Senate Debate on U.S. Civil Rights Commission Reauthorization

LEXSEE 135 Cong Rec S 15920

Congressional Record -- Senate

Thursday, November 16, 1989;
(Legislative day of Monday, November 6, 1989)

101st Cong. 1st Sess.

*135 Cong Rec S 15920*

REFERENCE: Vol. 135 No. 161

TITLE: U.S. CIVIL RIGHTS COMMISSION REAUTHORIZATION

SPEAKER: Mr. FORD; Mr. HATCH; Mr. SIMON

TEXT: [*S15920] Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1891, the U.S. Civil Rights Commission reauthorization bill now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1891) to extend the United States Commission on Civil Rights, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMON. Mr. President, I am pleased to announce that we have reached bipartisan agreement to extend the charter of the U.S. Commission on Civil Rights, which is due to expire on November 30, for 22 months. Joining me as cosponsors of this agreement are my good friends and distinguished colleagues from the Judiciary Committee, Senators Hatch, Kennedy, Thurmond, Biden, and Specter.

The U.S. Commission on Civil Rights was created in 1957 by President Eisenhower, and for many years, it enjoyed an excellent reputation as a nonpartisan, independent agency. The Commission attracted many distinguished Americans to its service, and its landmark studies made important contributions to our Nation's progress in the area of civil rights.

In the recent past, however, the Commission has suffered under a series of partisan appointments and a loss of credibility. As a result, it has been difficult to reach a consensus on what to do when the Commission expires at the end of this month.

Earlier this year I introduced S. 1714, which would have created a new, reinvigorated Civil Rights Commission after letting the old one expire. While there has been considerable interest and support for that proposal, time has proved too short for it to be enacted. I subsequently introduced a 6-month extension bill, S. 1801, but the administration favored 6 years. With the help of Senator Hatch, we have worked out a compromise to allow the Commission to do its work through fiscal year 1991.

During this time, the terms of four Commissioners will expire. The President has two of those appointments. I am hopeful that he will use this opportunity to reaffirm his commitment to civil rights and appoint distinguished individuals who can help restore the Civil Rights Commission as an independent agency dedicated to advancing the cause of equality.

I want to thank Senator Hatch for his valuable assistance, and ask unanimous consent that the full text of the bill be printed in the Record at this point.

Mr. HATCH. Mr. President, I am pleased to join Senator Simon as principal cosponsor of the Civil Rights Commission Reauthorization Act of 1989. This bill reauthorizes the U.S. Commission on Civil Rights until the end of fiscal year 1991. No changes are made to the language of the authorizing statute.

Earlier this year, I introduced S. 1800, which would reauthorize the Commission for 6 years. The President desired a 6-year reauthorization. Senator Simon introduced S. 1801, which reauthorized the Commission for 6 months. We have made a reasonable compromise that will leave the Commission to do its work. The administration has been heavily involved in working out the compromise.

I want to thank Senator Simon and Deborah Leavy of his staff, for their sincere efforts to save the Civil Rights Commission. Most of all, I want to thank President Bush and the administration for their strong support for the reauthorization of a meaningful Civil Rights Commission. The President is a strong supporter of equal opportunity for all Americans, and so am I. The administration's effort was instrumental in preserving the Commission.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3532, now at the desk, and that all after the enacting clause be stricken, that the text of S. 1891 be inserted in lieu thereof, that the bill be read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

## iv. 135 Cong Rec H 8919: House of Representatives Debate on Civil Rights Commission Reauthorization Act of 1989, 101 P.L. 180

LEXSEE 135 Cong Rec H 8919

Congressional Record -- House

Friday, November 17, 1989

101st Cong. 1st Sess.

*135 Cong Rec H 8919*

REFERENCE: Vol. 135 No. 162

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1989

SPEAKER: Mr. EDWARDS of California; Mr. FISH; Mr. GEKAS; Mr. KASTENMEIER; Mr. SENSENBRENNER; Mr. WALKER

TEXT: [*H8919] Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3532) to extend the United States Commission on Civil Rights.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1989".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975 et seq.) is amended --

(1) in section 7 (42 U.S.C. 1975e), by striking "1989" and inserting "1991"; and

(2) in section 8 (42 U.S.C. 1975f), by striking "six years after its date of enactment" and inserting "on September 30, 1991".

The SPEAKER pro tempore. Is a second demanded?

Mr. SENSENBRENNER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Edwards] will be recognized for 20 minutes, and the gentleman from Wisconsin [Mr. Sensenbrenner] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Edwards].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, yesterday the Senate reached a compromise with the White House on the bill passed by the House earlier in the week, H.R. 3532, a bill to extend the U.S. Commission on Civil Rights. The compromise is now before us.

In the compromise, the Commission on Civil Rights will be extended for 22 months, through the end of fiscal year 1991, until September 30, 1991. Rather than extending the Commission for 6 months, as in the House-passed bill, and examining the options for longer extension, the Commission will continue for 22 months.

Although 22 months is far longer than I would have preferred, in the spirit of compromise I am willing to accept it. I regret, however, that given that the recess is almost upon us, the House will not have time to carefully examine this extension.

By adopting this compromise, the Commission will have the opportunity to once again become strong, independent, credible, and effective. The President will have the opportunity to fulfill his promise to revitalize the troubled Civil Rights Commission, by making responsible appointments to the Commission.

The Commission has the opportunity to regain its respectability by conducting public hearings and issuing reports on the major civil rights issues that affect our Nation, instead of shooting personal opinions from the collective hip. In the next 22 months, I hope the Commission will produce factual reports which will help Congress and the Executive develop civil rights law and policy.

The Commission also has the opportunity to begin again an examination of how well civil rights laws are being enforced. This important task was not continued over the last 6 years, a time of great change on the civil rights front.

The Commission has the opportunity to fully utilize its State Advisory Committees [SAC's]. The SAC's, composed of volunteers in every State, are really the eyes and ears of the Commission throughout the country. They should be supported by a strong regional office network, and their advice should be respectfully considered by the Commission.

By appointing persons of stature to the Commission, with an interest and expertise in civil rights, the President can go a long way toward healing the wounds of the last 6 painful years. The new Chair and Vice Chair should reflect the new spirit promised by the President.

The Senate compromise also drops the section concerning appointment of the Staff Director. Under the compromise the President will continue to have the authority to appoint the Staff Director.

The Commission has been without a permanent Staff Director since 1986. As the critical first step toward revitalizing the Commission, the President should appoint an independent and nonpolitical permanent Staff Director without delay.

The Staff Director should quickly move to address the serious financial and administrative management problems found by the General Accounting Office in 1986, and never addressed by the Commission.

Most importantlly, the Staff Director must remain above the partisan fray. During the last 6 years, the Staff Directors have unfortunately viewed themselves as part of the administration, as agents of the President, rather than being independent and responsible to the Commission.

In order to maintain the independence necessary for this Commission, the Staff Director should not be beholden to the President, even though a Presidential appointee. Instead, the Staff Director should be responsible to all members of the Commission, no matter who appointed them.

Our Nation needs a strong, independent, credible and effective Commission on Civil Rights. Let us hope this compromise will enable the Commission to "launch a renewed civil rights mission," as President Bush promised in June.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. Kastenmeier].

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to compliment my chairman, the gentleman from California [Mr. Edwards], for his work on this bill. I think the compromise is a fair one and perhaps a very fortuitous result in terms of enabling the Congress to come to an agreeable result. The gentleman from California has done a great deal of work on this, and we look forward to the next 22 months under his leadership to legislate further with respect to perfecting the commission.

Mr. EDWARDS of California. Mr. Speaker, if the gentleman will yield, I thank the gentleman from Wisconsin [Mr. Kastenmeier] for his gracious words. The gentleman from Wisconsin [Mr. Kastenmeier] is a long-time member of the Subcommittee on Civil and Constitutional Rights and is one of the real, true heroes of the civil rights movement in the United States. I am grateful for his support, and I trust that he will be a long-time member of the subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of the motion to suspend the rules offered by the gentleman from California [Mr. Edwards].

Mr. Speaker, the Senate amendments upon which this motion to concur is based basically extends the life of the U.S. Commission on Civil rights for 22 months from November 30, 1989, until the end of the fiscal year, 1991, which is September 30 of that year. This motion is different than the bill which was passed by the [*H8920] House earlier this week in two significant respects.

First, the extension is for 22 months rather than 6 months and, second, the power to appoint the staff director, which the House vested in the Commission itself, is again returned to the President with the concurrence of a majority of the Commission.

There is no change in this legislation, in the Commission's statutory mandate, and while I would have preferred a 1-day gap so that the present Commission would have gone out of business for a day, thus allowing a complete housecleaning of this Commission that has not fulfilled its statutory mandate, in the spirit of compromise, I am willing to go along with this motion to suspend the rules.

Mr. Speaker, I recognize that without a 1-day gap, four of the Members of the present Commission will hold over throughout the 22-month period, including two Commissioners who have been at the center of the personality disputes that have dragged this Commission into disrepute. It is my hope that these Commissioners, as well as the four new appointees, two by the President, one by the Senator from Kansas [Mr. Dole], and the other by the gentleman from Illinois [Mr. Michel], will be able to exert a leveling influence on the Commission as a whole so that the Commission can get back on track and do the worthwhile work that it was noted for doing for years until the present personality conflicts seemed to go to the fore.

However, if this hope, which I know is shared by all of us who are supporting this motion to suspend the rules, is in vain, and this newly restored Commission ends up spending the next 22 months in the same type of personality arguments that the present Commission has spent the last 4 or 5 years engaging in, I wish to serve notice on the House now that this will be the last time I will support an extension of the Civil Rights Commission.

It seems to me that the Commission will be on probation this next 22 months. If it does worthwhile work, then it ought to be extended. If it falls into the same rut it has been in for the past several years, then we should allow it to die a peaceful death at the end of the fiscal year 1991.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Speaker, I will be brief. We bring to the House this evening a classic compromise fashioned by people of good will, agreed to by the administration and our colleagues in the majority party.

Mr. Speaker, I think congratulations are in order to Mr. Roger Porter of the President's Domestic Council, the chairman, the gentleman from California [Mr. Edwards], and the bipartisan members of the Senate Judiciary Committee, Senators Simon, Thurmond, Kennedy, and Hatch, as well as to the Leadership Conference on Civil Rights.

As the House has been informed, the objections that many Members had to the legislation earlier this week have been resolved, and I hope we will have a nearly unanimous vote in favor of the reauthorization.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Gekas].

(Mr. GEKAS asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, Members of the House, I, too, rise to support the legislation before us and proclaim, as I have anytime this issue has arisen, that I am a supporter of the basic concept of, and the institution of, the U.S. Commission on Civil Rights. But I support this piece of legislation that renews it for a 22-month period with no enthusiasm whatsoever.

I still sense that the majority in this issue, since I have been a Member of the Congress, has been in a thwarting mood, a mood to thwart President Reagan, first, and now President Bush in the power of appointment that rests exclusively at their desks. I saw in their effort here originally to extend

this for only 6 months and now 22 months a cynical effort, and perhaps it is just the way I look at things, to further curb that powerful position of appointive power that the President of the United States solely holds and which he should hold solely. But because of the 22-month extension and because the White House now seems to have come to some compromise level in the present legislation, I, too, will support this new venture into the new life of the Commission on Civil Rights.

I simply want to know and will be told, I am sure, by events as they unfold if we are going to forever see the Congress of the United States interfering in its own kind of gentle and kind way with the prerogatives of the President of the United States.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise to congratulate the gentleman from California and the gentleman from Wisconsin for having worked this bill out. There was some element of controversy that surrounded the passage of the bill the other day on the House floor. That controversy arose more out of procedure than it did out of the fundamental nature of the work of the Civil Rights Commission, and I think it is important to understand the gentleman from California and the gentleman from Wisconsin have worked out their differences and worked out any differences with the White House.

We do have a bill before us this evening that, I think, most of the Members of the body can feel comfortable in supporting. I would certainly urge them to support it at this point.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. Walker] for his gracious words. The other gentleman from Pennsylvania [Mr. Gekas] perhaps did not use words very accurately when he said that we were cynical on this side. We are not. Mr. Speaker, the subcommittee that I chair, ably assisted by the gentleman from Wisconsin [Mr. Sensenbrenner] and the other members of the minority, has a very large responsibility insofar as the Civil Rights Commission is concerned. We authorize the money that is appropriated for the Civil Rights Commission, to pay the salaries of its staff. We expect them to do a good job, a businesslike job, and not a political job.

The civil rights laws are very clear. They are a very proud accomplishment of this country. They make us stand tall in the world. We want a Civil Rights Commission that looks good too, and reflects the value of our civil rights laws.

I have every confidence now that President Bush is serious about getting us some good people. as the gentleman from Wisconsin [Mr. Sensenbrenner] said, they are on probation at the Commission for the next 22 months, because if they do not do a good job, they jeopardize their future existence. at the end of this 22 months, if they are not doing a good job, perhaps the Civil Rights Commission should be no longer.

I thank my colleagues for their cooperation, and I thank the gentleman from the White House, Roger Porter, who worked with us. I especially thank the gentleman from New York [Mr. Fish], who was a great help in mediating the minor disputes that we had with not only the President's people, but among ourselves.

But we have reached an amicable agreement, Mr. Speaker, and I am very pleased. I wish the Civil Rights Commission great success in the coming 22 months.

I also know the greetings of our chairman, Mr. Jack Brooks of Texas, go with our good will toward the Commission. As Members know, the distinguished chairman has been ill for the past few weeks, but it is with great joy that I announce that he is making good progress. He is keeping an eye on everything that we are doing here, and I am sure that he will be back with us in full bloom next year.

[*H8921] Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Williams). The question is on the motion offered by the gentleman from California [Mr. Edwards] that the House suspend the rules and concur in the Senate amendment to H.R. 3532.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were -- yeas 389, nays 0, not voting 44, as follows:

(See Roll No. 368 in the ROLL segment.)

Mr. NAGLE changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ROLL:

[Roll No. 368]

YEAS -- 389

| | | |
|---|---|---|
| Ackerman | Akaka | Alexander |
| Anderson | Andrews | Anthony |
| Applegate | Archer | Armey |
| Atkins | AuCoin | Baker |
| Ballenger | Barnard | Bartlett |
| Bateman | Bates | Beilenson |
| Bennett | Bentley | Bereuter |
| Berman | Bevill | Bilbray |
| Bilirakis | Bliley | Boehlert |
| Boggs | Borski | Bosco |

| | | |
|---|---|---|
| Boucher | Boxer | Brennan |
| Broomfield | Browder | Brown (CA) |
| Brown (CO) | Bruce | Buechner |
| Bunning | Burton | Byron |
| Callahan | Campbell (CA) | Cardin |
| Carper | Carr | Chandler |
| Chapman | Clarke | Clay |
| Clement | Clinger | Coble |
| Coleman (MO) | Coleman (TX) | Collins |
| Combest | Condit | Conte |
| Conyers | Cooper | Costello |
| Coughlin | Courter | Cox |
| Coyne | Craig | Crockett |
| Dannemeyer | Darden | Davis |
| de la Garza | DeFazio | DeLay |
| Dellums | Derrick | DeWine |
| Dickinson | Dicks | Dingell |
| Dixon | Dorgan (ND) | Dornan (CA) |
| Douglas | Downey | Dreier |
| Duncan | Durbin | Dwyer |
| Dymally | Dyson | Eckart |
| Edwards (CA) | Edwards (OK) | Emerson |
| Engel | English | Erdreich |
| Espy | Evans | Fascell |
| Fawell | Fazio | Feighan |
| Fields | Fish | Flake |
| Flippo | Foglietta | Ford (MI) |
| Frank | Frenzel | Frost |
| Gallo | Gaydos | Gejdenson |
| Gekas | Geren | Gibbons |
| Gillmor | Gilman | Gingrich |
| Glickman | Gonzalez | Goodling |
| Gordon | Goss | Gradison |
| Grandy | Grant | Gray |
| Green | Guarini | Gunderson |
| Hall (OH) | Hall (TX) | Hamilton |
| Hammerschmidt | Hancock | Hansen |
| Harris | Hastert | Hatcher |
| Hawkins | Hayes (IL) | Hayes (LA) |
| Hefley | Hefner | Henry |
| Herger | Hertel | Hiler |
| Hoagland | Hochbrueckner | Holloway |
| Hopkins | Horton | Houghton |
| Hoyer | Hubbard | Huckaby |
| Hughes | Hunter | Hyde |
| Inhofe | Ireland | Jacobs |

James
Johnston
Jontz
Kasich
Kennelly
Kolbe
Kyl
Lancaster
Leath (TX)
Levin (MI)
Lewis (GA)
Lloyd
Lowey (NY)
Machtley
Markey
Martin (NY)
Mavroules
McCloskey
McDermott
McHugh
McNulty
Michel
Miller (WA)
Mollohan
Morella
Mrazek
Myers
Neal (MA)
Oakar
Olin
Owens (UT)
Pallone
Parris
Paxon
Pease
Perkins
Pickle
Price
Ravenel
Rhodes
Ritter
Roe
Ros-Lehtinen
Roth
Roybal
Sangmeister
Johnson (CT)
Jones (GA)
Kanjorski
Kastenmeier
Kildee
Kolter
LaFalce
Laughlin
Lehman (CA)
Lewis (CA)
Lightfoot
Long
Luken, Thomas
Madigan
Marlenee
Martinez
Mazzoli
McCollum
McEwen
McMillan (NC)
Meyers
Miller (CA)
Mineta
Montgomery
Morrison (CT)
Murphy
Nagle
Nielson
Oberstar
Ortiz
Oxley
Panetta
Pashayan
Payne (NJ)
Pelosi
Petri
Porter
Pursell
Ray
Richardson
Roberts
Rogers
Rose
Roukema
Sabo
Sarpalius
Johnson (SD)
Jones (NC)
Kaptur
Kennedy
Kleczka
Kostmayer
Lagomarsino
Leach (IA)
Lent
Lewis (FL)
Livingston
Lowery (CA)
Lukens, Donald
Manton
Martin (IL)
Matsui
McCandless
McCurdy
McGrath
McMillen (MD)
Mfume
Miller (OH)
Moakley
Moorhead
Morrison (WA)
Murtha
Natcher
Nowak
Obey
Owens (NY)
Packard
Parker
Patterson
Payne (VA)
Penny
Pickett
Poshard
Rangel
Regula
Rinaldo
Robinson
Rohrabacher
Rostenkowski
Rowland (GA)
Saiki
Savage

| | | |
|---|---|---|
| Sawyer | Saxton | Schaefer |
| Scheuer | Schiff | Schneider |
| Schroeder | Schuette | Schulze |
| Schumer | Sensenbrenner | Shaw |
| Shays | Shumway | Sikorski |
| Sisisky | Skaggs | Skeen |
| Slattery | Slaughter (NY) | Slaughter (VA) |
| Smith (FL) | Smith (IA) | Smith (NE) |
| Smith (NJ) | Smith (TX) | Smith (VT) |
| Smith, Robert (OR) | Snowe | Solarz |
| Solomon | Spence | Staggers |
| Stallings | Stangeland | Stark |
| Stearns | Stenholm | Stokes |
| Studds | Stump | Sundquist |
| Swift | Tallon | Tanner |
| Tauke | Tauzin | Taylor |
| Thomas (CA) | Thomas (GA) | Thomas (WY) |
| Torres | Towns | Traficant |
| Traxler | Udall | Unsoeld |
| Upton | Valentine | Vander Jagt |
| Vento | Volkmer | Vucanovich |
| Walgren | Walker | Walsh |
| Waxman | Weber | Weiss |
| Weldon | Wheat | Whittaker |
| Whitten | Williams | Wilson |
| Wolf | Wolpe | Wyden |
| Wylie | Yates | Yatron |
| Young (AK) | Young (FL) | |

NAYS -- 0

NOT VOTING -- 44

| | | |
|---|---|---|
| Annunzio | Aspin | Barton |
| Bonior | Brooks | Bryant |
| Bustamante | Campbell (CO) | Crane |
| Donnelly | Early | Florio |
| Ford (TN) | Gallegly | Garcia |
| Gephardt | Hutto | Jenkins |
| Lantos | Lehman (FL) | Levine (CA) |
| Lipinski | McCrery | McDade |
| Molinari | Moody | Neal (NC) |
| Nelson | Quillen | Rahall |
| Ridge | Rowland (CT) | Russo |
| Sharp | Shuster | Skelton |
| Smith, Denny (OR) | Smith, Robert (NH) | Spratt |

| | | |
|---|---|---|
| Synar | Torricelli | Visclosky |
| Watkins | Wise | |

## v. Legislative History of 101 P.L. 180

*CIS-NO: 89-PL101-180 DOC-TYPE: Legislative History*



89 CIS PL 101180; 101 CIS Legis. Hist. P.L. 180

LEGISLATIVE HISTORY OF: P.L. 101-180

**TITLE:** Civil Rights Commission Reauthorization Act of 1989

CIS-NO: 89-PL101-180
DOC-TYPE: Legislative History
DATE: Nov. 28, 1989
LENGTH: 1 p.
ENACTED-BILL: 101 H.R. 3532 Retrieve Bill Tracking report
STAT: 103 Stat. 1325
CONG-SESS: 101-1
ITEM-NO: 575

**SUMMARY:**
"To extend the United States Commission on Civil Rights."

Amends the U.S. Commission on Civil Rights Act of 1983 to extend authorization of the Commission through Sept. 30, 1991.

**CONTENT-NOTATION:** Civil Rights Commission programs extension

**BILLS:** 101 S. 1714; 101 S. 1800; 101 S. 1801; 101 S. 1891

**DESCRIPTORS:**
COMMISSION ON CIVIL RIGHTS; CIVIL RIGHTS; U.S. COMMISSION ON CIVIL RIGHTS ACT

**REFERENCES:**

DEBATE:

135 Congressional Record, 101st Congress, 1st Session - 1989
Nov. 14, House consideration of H.R. 3532.
Nov. 15, House consideration and passage of H.R. 3532.
Nov. 16, Senate consideration and passage of H.R. 3532 with an amendment, and indefinite postponement of S. 1891.
Nov. 17, House concurrence in the Senate amendment to H.R. 3532.

HEARINGS:

101st Congress

Hearings on Commission on Civil Rights reauthorization before the Subcommittee on Civil and Constitutionsl Rights, House Judiciary Committee, Apr. 27, 1989. (Not available at time of publication.)

Hearings on Commission on Civil Rights authorization before the Sub committee on the Constitution, Senate Judiciary Committee, June 22, 1989. (Not available at time of publication.)

## B. 102 P.L. 167 (1991)

### i. Text of 102 P.L. 167 (1991)

LEXSEE 102 PL 167

UNITED STATES PUBLIC LAWS
102ND CONGRESS-FIRST SESSION


PUBLIC LAW 102-167 [H.R. 3350]
NOVEMBER 26, 1991
UNITED STATES COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

*102 P.L. 167; 105 Stat. 1101; 1991 Enacted H.R. 3350; 102 Enacted H.R. 3350*

BILL TRACKING REPORT: 102 Bill Tracking H.R. 3350
FULL TEXT VERSION(S) OF BILL: 102 H.R. 3350
CIS LEGIS. HISTORY DOCUMENT: 102 CIS Legis. Hist. P.L. 167

An Act To extend the United States Commission on Civil Rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1]
SECTION 1. <*42 USC 1975* note> SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

[*2]
SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975c)* is amended by adding at the end the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

[*3]
SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975e)* is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act, $ 7,159,000 for fiscal year 1992, and an additional $ 1,200,000 for fiscal year 1992 to relocate the headquarters office.".

[*4]
SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975f)* is amended by striking "1991" and inserting "1994".

[*5]
SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975*(c), 1975a (a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

Speaker of the House of Representatives.
Vice President of the United States and
President of the Senate.

## ii. Text of S. 1264, Senate Version of Legislation

LEXSEE 102 s 1264

FULL TEXT OF BILLS

102ND CONGRESS; 1ST SESSION
IN THE SENATE OF THE UNITED STATES
AS INTRODUCED IN THE SENATE

S. 1264

*1991 S. 1264; 102 S. 1264*
Retrieve Bill Tracking Report

SYNOPSIS:
A BILL To extend the United States Commission on Civil Rights, and for other purposes.

DATE OF INTRODUCTION: JUNE 11, 1991

DATE OF VERSION: JUNE 13, 1991 -- VERSION: 1

SPONSOR(S):
Mr. SIMON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

TEXT:

A BILL
To extend the United States Commission on Civil Rights, and for other purposes.

* Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled, *
SECTION 1. SHORT TITLE.
This Act may be cited as the "United States Commission on Civil Rights Act of 1991".
SEC. 2. REFERENCES.
Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975* et seq.).

SEC. 3. ESTABLISHMENT OF THE COMMISSION.

Section 2 *(42 U.S.C. 1975)* is amended-

(1) in subsection (a), by adding at the end the following new sentence:

"The Commission shall be an independent, nonpartisan, fact-finding body.";

(2) in subsection (b)(1)(A), by inserting before the semicolon the following: ", and of the members appointed not more than three shall be appointed from the same political party"; and

(3) by striking subsection (c) and inserting the following new subsection:

"(c)(1) There shall be a Chairperson and a Vice Chairperson of the Commission (hereafter in this Act referred to as the 'Chairperson' and the 'Vice Chairperson', respectively), who shall be selected by a majority of the members of the Commission, from the membership of the Commission.

"(2) The Chairperson and Vice Chairperson shall serve for terms of 3 years and may serve successive terms.

"(3) The Vice Chairperson shall act in the place of the Chairperson in the absence of the Chairperson.

"(4) In the absence of the Chairperson and the Vice Chairperson, the senior member of the Commission shall serve as the Acting Chairperson of the Commission.".

SEC. 4. EVIDENCE OR TESTIMONY IN EXECUTIVE SESSION.

Section 3(g) *(42 U.S.C. 1975a*(g)) is amended-

(1) by inserting "(1)" after the subsection designation;

(2) in paragraph (1) (as designated by paragraph (1) of this section), by striking "Whoever" and inserting "A party who"; and

(3) by adding at the end the following new paragraph:

"(2) The term 'party' means-

"(A) a person whose services are compensated by the Federal Government; or

"(B) an individual appointed under section 6(c) who provides voluntary services to the Commission.".

SEC. 5. COMPENSATION OF MEMBERS OF THE COMMISSION.

Section 4(a) *(42 U.S.C. 1975b*(a)) is amended-

(1) by inserting "(1)" after the subsection designation;

(2) in paragraph (1) (as designated by paragraph (1) of this paragraph), by striking "shall receive a sum equivalent" and all that follows through "work of the Commission, shall" and inserting "shall receive compensation equal to the hourly equivalent of the rate specified for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each hour the member is engaged in the work of the Commission, and, while engaged in the work, shall"; and

(3) by adding at the end the following new paragraph:

"(2) The total compensation that a member of the Commission may receive under subparagraph (a) in any one calendar year shall not exceed one-half of the rate specified for level IV of the Executive Schedule under section 5315 of title V, United States Code.".

SEC. 6. DUTIES OF THE COMMISSION.

Section 5 *(42 U.S.C. 1975c)* is amended-

(1) by striking subsection (a) and inserting the following new subsection:

"(a) The Commission shall-

"(1) investigate allegations that-

"(A) are made in writing;

"(B) are made under oath or affirmation;

"(C) set forth facts on which such allegations are based; and

"(D) allege that certain citizens of the United States-

"(i) are being denied the right to vote, and have such vote properly counted, on the basis of the race, color, religion, sex, age, language, disability, or national origin, of the citizens; or

"(ii) are unlawfully being accorded or denied the right to vote, and have such vote properly counted, in any election of a Presidential elector, Member of the Senate, or Member of the House of Representatives, as a result of a pattern or practice of fraud or discrimination in the conduct of such election;

"(2) study and collect information, and appraise the laws and policies of the Federal Government, concerning legal developments constituting discrimination, or a denial of equal protection of the laws under the Constitution, on the basis of race, color, religion, sex, age, language, disability, or national origin, with respect to-

"(A) administration of justice;

"(B) educational opportunity;

"(C) employment opportunity; and

"(D) equal housing opportunity; and

"(3) serve as a national clearinghouse for information concerning discrimination, or denial of equal protection of the laws under the Constitution, on the basis of race, color, religion, sex, age, language, disability, or national origin, with respect to activities including-

"(A) voting;

"(B) education;

"(C) housing;

"(D) employment;

"(E) use of public facilities;

"(F) transportation; and

"(G) administration of justice.";

(2) by striking subsection (c) and inserting the following new

subsection:

"(c)(1) The Commission shall submit an annual report to the appropriate committees of Congress and to the President containing information concerning-

"(A) the existing status of civil rights in the United States;

"(B) the enforcement of civil rights laws by Federal, State, and local governments;

"(C) the existing status of the political, social, and economic equality of minorities and women;

"(D) the impact of Federal fiscal policies, programs, and activities on minorities and women; and

"(E) any other information that the Chairperson determines to be appropriate.

"(2)(A) The Commission shall appraise the laws and policies of each State and the Federal Government to determine the impact of the laws and policies on-

"(i) denial of the right of minority groups, including African Americans, Hispanic Americans, Asian Americans, Native Americans, Americans from the Pacific Islands, women, and disabled individuals, to vote; and

"(ii) the political participation of the minority groups.

"(B) The Commission shall include the result of the appraisals conducted under subparagraph (A) in the reports required under paragraph (1).";

(3) by striking subsection (d) and inserting the following new subsection:

"(d) The Commission may submit an amicus curiae brief to the Supreme Court of the United States on any matter within the jurisdiction of the Commission, if a majority of the members of the Commission approve the submission of such brief."; and

(4) by striking subsection (f).

SEC. 7. POWERS OF THE COMMISSION.

Section 6 of the Act *(42 U.S.C. 1975d)* is amended-

(1) in subsection (a)-

(A) in paragraph (1)-

(I) by inserting "(A)" after the paragraph designation;

(II) in subparagraph (A) (as designated by subparagraph (A) of this paragraph), by-

(i) striking "staff director" and inserting "Executive Director"; and

(ii) striking "appointed" and all that follows and inserting "selected by a majority of the members of the Commission."; and

(III) by adding at the end the following new subparagraphs:

"(B) The Executive Director shall serve as the chief operating officer of the Commission and shall be responsible for the day-to-day operations

of the agency, including matters pertaining to employment, use and expenditure of funds, and general administration, consistent with policies determined by the Commission.

"(C) In the event of a vacancy in the position of Executive Director, the Chairperson shall designate, with the concurrence of a majority of the members of the Commission, an employee of the Commission to serve as Acting Executive Director.

"(D) The Executive Director shall receive compensation at the rate specified for level II of the Executive Schedule under section 5313 of title 5, United States Code."; and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) Notwithstanding any other provision of law, the Commission shall be bound by the provisions of title 5, United States Code, by which the Commission on Civil Rights, established by the Civil Rights Act of 1957, was bound.";

(2) by striking subsection (b) and inserting the following new subsection:

"(b)(1) Except as provided in section 3111 of title 5, United States Code, and in paragraph (2)(B), the Commission shall not accept voluntary services.

"(2) Subject to paragraph (4), the Commission may, in order to carry out the duties of the Commission-

"(A) accept, use, and dispose of gifts or donations and property, made by Federal, State, or local agencies, or individuals appointed under section 2(b)(1) or section 6(c); and

"(B) notwithstanding section 1342 of title 31, United States Code, accept voluntary services provided by an agency described in subparagraph (A) or an individual appointed under section 6(c).

"(3) Subject to paragraph (4), and in accordance with the policy and program direction established by the members of the Commission and with the clearinghouse function of the agency, the Commission may enter into cooperative agreements with Federal, State and local agencies to participate in-

"(A) public information programs, including forums, conferences or other educational events; and

"(B) such other activities as, from time to time, may be necessary to carry out the duties of the Commission.

"(4)(A) The Commission may accept, use, and dispose of the gifts and donations of property described in subparagraph (A), and accept the voluntary services described in subparagraph (B), of paragraph (2), and enter into the cooperative agreements described in paragraph (3), to the extent the acceptance, use, disposal, or entry into agreements-

"(I) does not create the appearance of a conflict of interest because of the nature of-

"(i) the persons, or affiliates of the persons, providing the

gifts, donations, or voluntary services, or entering into the agreements; or

"(ii) the activities that are the subject of the agreements; or

"(II) does not constitute or imply an endorsement by the Commission of the products or services of the persons or affiliates described in clause (i)(I).

"(B) The Commission shall ensure that a person entering into the cooperative agreements described in paragraph (3) shall receive appropriate recognition in the activities that are the subject of the agreements, to the extent that the recognition does not constitute or imply an endorsement by the Commission of, or give undue recognition to, the person.";

(3) in subsection (c)-

(A) by inserting "(1)(A)" after the subsection designation;

(B) in paragraph (1) (as designated by subparagraph (A) of this paragraph), by adding at the end the following new subparagraph:

"(B) As used in this paragraph, the term 'State' includes the District of Columbia, Puerto Rico, and any commonwealth or territory of the United States."; and

(C) by adding at the end the following new paragraphs:

"(2) An advisory committee established under paragraph (1) shall have the same investigative authority as the Commission has under section 3 except that such committee shall not-

"(A) subpoena a witness or require such witness to produce written or other material for the Commission; or

"(B) conduct investigations beyond the boundary of the State in which such committee is located.

"(3) A member of an advisory committee shall not be considered to be an 'officer' or 'employee', as defined in sections 2104 and 2105, respectively, of title 5, United States Code."; and

(4) by adding at the end the following new subsection:

"(j) The Commission may use not more than 0.1 percent of the funds appropriated under section 7 for official representation and reception.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 7 *(42 U.S.C. 1975e)* is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act such sums as may be necessary for each of the fiscal years 1992 through 1995.".

SEC. 9. TERMINATION.

Section 8 *(42 U.S.C. 1975f)* is amended by striking "1991" and inserting "1995".

SEC. 10. CONFORMING AMENDMENTS.

Subsections (a), (d), and (f) of section 3, and section 6(f) (42 U.S.C. 1975a(a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

## iii. 137 Cong Rec H 7088: House of Representatives Debate on Civil Rights Commission Reauthorization Act of 1991, 102 P.L. 167

LEXSEE 137 Cong Rec H 7088

Congressional Record -- House

Monday, September 30, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 7088*

REFERENCE: Vol. 137 No. 137

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1991

SPEAKER: Mr. BROOKS; Mr. EDWARDS of California; Mr. HYDE; Mr. SENSENBRENNER

TEXT: [*H7088] Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3350) to extend the U.S. Commission on Civil Rights.

The Clerk read as follows:

H.R. 3350

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1991".

SEC. 2. REAUTHORIZATION.

The United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975 et seq.) is amended --

(1) in section 7, by adding at the end the following: "There are authorized to be appropriated $6,000,000 for each fiscal year thereafter through fiscal year 1993."; and

(2) in section 8, by striking "1991" and inserting "1993".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. Brooks] will be recognized for 20 minutes and the gentleman from Illinois [Mr. Hyde] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3350, the Civil Rights Commission Reauthorization Act of 1991, reauthorizes the U.S. Commission on Civil Rights for 2 years, through 1993, at an annual authorization level of $6 million. During the past reauthorizations, including the last one -- which was for 22 months -- in 1989, concerns were expressed about the Commission's commitment to its fact-finding mission. The Commission seemed to be expending its energies more on divisive rhetoric than on fulfilling its mandate to investigate and report on the complex issues surrounding the protection of civil rights.

This mandate has guided the Commission since its creation under the Civil Rights Act of 1957 as a fact-finding agency. Despite changes in the Commission's structure -- from a Presidentially appointed body to a joint Presidential-Executive Commission -- the Commission's goals of studying [*H7089] discrimination and the denial of equal protection under the law have remained constant for over 30 years. This mission is important to ensuring that all of our citizens are treated fairly.

With the appointment of a new Chairman and the creation of a Staff Director position since the last reauthorization, the Commission has shown some signs of moving in a productive direction. The 2-year reauthorization allows that progress to continue and will encourage the agency to focus its resources on fulfilling its important statutory responsibilities.

Mr. Speaker, the chairman of our Civil and Constitutional Rights Subcommittee, the gentleman from California [Mr. Edwards] has done an excellent job on this important piece of legislation. I also commend the ranking minority member of the subcommittee Mr. Hyde, for his leadership and support of this legislation.

Since the authorization of the Civil Rights Commission expires today, it is important that we adopt this legislation and send it to the Senate. I urge the Members' support.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3350, to reauthorize the U.S. Commission on Civil Rights for a period of 2 years at a funding level of $6 million per year.

The subcommittee has carefully reviewed the activities and programs of the Commission during its most recent 22-month authorization. Unfortunately, the record of the Commission in that time period is less than stellar. The Commission has had no hearings, no consultations, and has issued only one statutory report. In addition, the testimony from our oversight hearing with regard to future activities of the Commission was not comforting. While we are reassured by the sincerity of the Commissioners and its fine staff, it appears that, as a whole, the Commission is unable to focus its energy and resources on the completion of specific projects within its congressional mandate.

While the reauthorization may seem harsh, it is meant to send clear message to the Civil Rights Commission: Your work is needed more than ever, but Congress and the American people must have the confidence that it is being performed in a focused and thoughtful manner.

The administration supports reauthorization of the Civil Rights Commission and has no objection to the passage of H.R. 3350. I offer a copy of the statement of administration policy for the Record.

STATEMENT OF ADMINISTRATION POLICY

The Administration supports reauthorization of the U.S. Commission on Civil Rights and has no objection to House passage of H.R. 3350. The Administration, however, is concerned that the appropriation authorizations in the bill are insufficient and the two-year extension of the Commission's termination date is too brief.

H.R. 3350 would authorize appropriations of $6 million for each of FYs 1992 and 1993 for the Commission. These levels are significantly below the $10.8 million requested for the Commission in the President's FY 1992 Budget and less than the amounts in the FY 1992 House and Senate appropriations bills. The two-year extension of the Commission's termination date is well below the 10-year extension previously endorsed by the Administration.

The Administration will work to address its concerns during the House/Senate conference.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Edward], the distinguished chairman of the subcommittee that brought this bill out and channeled so much civil rights legislation to us over the years.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I thank my chairman, the gentleman from Texas [Mr. Brooks] and subscribe to his remarks, and those of the ranking member of the subcommittee, the gentleman from Illinois [Mr. Hyde].

We did examine the work of the Civil Rights Commission with great care and were disappointed with the record of the past few years.

The Congress, in establishing the Civil Rights Commission in 1957, established a fact-finding agency. The Commission strayed from that mission, and we expect them to get back on track.

After the controversy of the 1980's, there is a new spirit in the Civil Rights Commission, thanks to the distinguished new chairman, Mr. Arthur Fletcher, new Commissioners, and the new staff director. We expect good things. We expect that they are going to get back to their fact-finding mandate.

That is the message that we are sending to the Civil Rights Commission, that we want them back on track. It has been and again can be a very valuable institution.

We believe the $6 million authorized in H.R. 3350 will provide sufficient resources for the Commission's fact-finding work. However, it will not allow them to open additional regional offices in different parts of the country. That should be down the road, after the Civil Rights Commission comes back to us in a year or two and says, "This is what we have been doing. You see we have made these improvements. We're back to our statutory mandate, and we are asking Congress to authorize and appropriate a little more money so that these necessary offices can be put in place."

At every stage of the subcommittee's reauthorization review, we have had the cooperation and have been working together in a most agreeable fashion with the minority members of the subcommittee. The minority members being led by the distinguished gentleman from Illinois [Mr. Hyde].

Mr. Speaker, we had no disagreement about the 2-year reauthorization and the $6 million appropriation. I must admit that there was some discussion among some of the members who, after listening to the testimony and reading the record, recommended less money and a 1-year authorization, but the administration wants more.

We think that with the admonitions that we have raised during this reauthorization, that we are doing the right thing.

So Mr. Speaker, I thank the chairman of the committee, I thank the gentleman from Illinois [Mr. Hyde] and the Members on the other side of the aisle. Both the minority and majority staff have done good work.

We wish the Commission well. We are going to be their partners in the next 2 years of the authorization, and we hope that next year and the year after that we can return to this body, Mr. Speaker, with a more favorable report.

I ask that the bill be enacted as reported by the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I yield 8 minutes to the distinguished gentleman from Wisconsin [Mr. Sensenbrenner], who is the former ranking member on this subcommittee.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to this legislation. This legislation proposes to authorize $6 million per year for each of the next 2 years for a Federal agency that has been mismanaged, has not done anything, and is roundly criticized even by its supporters, as we have just heard from the last three speakers. It is time to put this Commission out of its misery. It is time for the Congress to abolish the Civil Rights Commission and to start up a new agency, in my opinion, which can act in a far more constructive and productive manner on the many issues relating to civil rights that face our society.

Even the supporters of the Commission within this Congress are less than enthusiastic about their endorsement. We have heard from the gentleman from Texas [Mr. Brooks], the gentleman from California [Mr. Edwards], and the gentleman from Illinois [Mr. Hyde]. None of these three gentlemen who have spoken prior to my speech today have given the Commission an enthusiastic endorsement. As a matter of fact, if I heard them correctly, it was not an endorsement at all.

I think in these times of fiscal constraint, when we are looking for ways to save money, to reduce the deficit, [*H7090] and to reset priorities, keeping the Commission members and the Commission staff on the Federal payroll are something that we can do without.

According to the gentleman from California [Mr. Edwards] at the Judiciary Committee markup on September 24, 1991:

During the last 2 years the Commission has only issued one report, and it has had no hearings or consultations.

Yet the appropriation has been a little bit less than $7 million per year for each of the last 2 years. Providing $14 million for one report and no hearings or consultations, in my opinion, is mismanagement of the highest order. To continue this Commission without any guarantees that there will be increased productivity I believe simply takes money out of the taxpayers' pocket and does not use it for good use.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I say to my distinguished friend, I would like to observe, and I know we Democrats are not perfect, we have many flaws, but we are not the ones who recommended the 10-year extension of this Commission at $10 million a year. That was this administration.

We thought that was a little much, and so we cut it back to $6 million, $1 million less than last year, and $4 million less than the administration requested. We did not make it for 10 years, we made it for 2 years.

I thought we used some judgment but also some compassion. We always are trying to help any administration when they are making an effort to do the Lord's work, and so we tried to help, but not too much.

Mr. SENSENBRENNER. Reclaiming my time, even my administration can be wrong, and I am awful afraid that it is on this one.

I think the administration's recommendation was 10 years too long and $10 million a year too high, given the track record of this Commission.

Twenty-two months ago when I was the ranking minority member of the subcommittee that my friend from California, Mr. Edwards, chairs, we took the floor and got an extension of this Civil Rights Commission and put them on notice that they were on strict probation during this 22-month period when their work would be carefully reviewed before the authorization was up, and before the Congress had to make a decision on what to do next.

I have carefully reviewed that record, as has my friend from Texas, and I think that one report, and no hearings, and no consultations for $7 million a year is missing the target. There is nothing in the record that indicates to me that this Commission is going to clean up its act. We do not have any kind of promises that there is going to be any more activity during the next 2 years than there was for the last 22 months.

Another member of the subcommittee, a member of my party, the gentleman from Florida [Mr. McCollum] last Tuesday at the markup said:

The Commission seems unable, in my judgment, to focus its energy and resources on the completion of specific projects within its congressional mandate.

The Commission members will be the same Commission members that we have had for the last 22 months and the same staff. Here the gentleman from Florida [Mr. McCollum] says that it has been unable to focus on what its job is. Should we continue it? Should we reward it with another $12 million of the taxpayers' hard-earned dollars? I thinkthe answer to that question is no.

During the last 22 months, the Commission has produced practically nothing. Many civil rights groups around the Nation have asked the Congress to close down the Commission, and in the words of my friend from California, the chairman of the subcommittee [Mr. Edwards] to get rid of it altogether. And I think the time has come for the Congress to accept that challenge and to get rid of it altogether, given its track record.

We have given this Commission chance after chance. We have funded them to keep most of their staff on the payroll, and there has been no results whatsoever.

At least they have gotten themselves out of the controversy that plagued the Commission during the decade of the 1980's, but apparently their way to avoid controversy is not to do anything except cash their paychecks. I think that given our deficit and given the fact that we cannot find money for unemployment compensation, we cannot find money for victims of crime, we cannot find money to help the police do their job, that a reallocation of resources away from a do-nothing Commission and into some programs that will help improve the quality of life for all Americans is very much in order.

I would hope that this Congress would defeat this bill today so that we can have a better focus on the issues of civil rights and save the taxpayers some money to boot.

I thank the gentleman from Illinois for yielding time, and yield back to him the balance of my time.]

Mr. HYDE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. McDermott). The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and pass the bill, H.R. 3350.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## iv. 137 Cong Rec S 15306: Senate Debate on U.S. Commission on Civil Rights Extension Act

LEXSEE 137 Cong Rec S 15306

Congressional Record -- Senate

Monday, October 28, 1991

102nd Cong. 1st Sess.

*137 Cong Rec S 15306*

REFERENCE: Vol. 137 No. 156

TITLE: U.S. COMMISSION ON CIVIL RIGHTS EXTENSION ACT

SPEAKER: Mr. HATCH; Mr. LOTT; Mr. MITCHELL; Mr. SIMON

TEXT: [*S15306] Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 272, H.R. 3350, a bill to extend the U.S. Civil Rights Commission.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3350) to extend the United States Commission on Civil Rights.

[*S15307] The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1276

Mr. MITCHELL. Mr. President, on behalf of Senators Simon and Hatch, I send a substitute amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Maine [Mr. Mitchell], for Mr. Simon (for himself and Mr. Hatch), proposes an amendment numbered 1276.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991."

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994."

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d (f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson."

Mr. SIMON. Mr. President, I am pleased to announce that we have reached a bipartisan agreement on reauthorization of the U.S. Commission on Civil Rights.

This legislation is the product of a Constitution Subcommittee hearing held over the summer at which civil rights organizations and the Commission testified and numerous discussions among Democrats and Republicans, House and Senate committees, the Commission and other interested parties.

The substitute to the House bill that Senator Hatch and I offer today extends the life of the Commission on Civil Rights for 3 years until the end of fiscal year 1994. This represents a genuine compromise. The original bill I introduced sought a 4-year reauthorization. The administration sought 10 years and the Commission sought 25 years. The House-passed bill would have reauthorized the Commission for 2 years. Each of us has had to come up or come down from our original positions.

There were numerous reforms that I and others sought for the Commission that are not contained in the legislation we have agreed to. But that is the essence of compromise and we will all

have significant opportunities to work with the Commission to enable it to respond to the civil rights challenges in the 1990's and shape the national agenda.

For the fiscal year we are now in, fiscal year 1992, the Commission is authorized for $7.159 million of appropriations. This is the same amount that is contained in the Commerce-Justice-State appropriations bill.

We have also authorized $1.2 million in supplemental appropriations which will enable the Commission to relocate its headquarters to Capitol Hill. Because of extensive fire safety deficiencies at the Commission's current downtown location, the General Services Administration will not renew the Commission's lease and requires it to incur expenses this fiscal year in order to be able to move in November 1992.

Mr. President, I ask unanimous consent that a letter from the General Services Administration to the U.S. Commission on Civil Rights be printed in the Record, along with a seven-paragraph summary enumerating Commission moving and related expenses.

There being no objection, the material was ordered to be printed in the Record, as follows:

General Services Administration, National Capital Region,
Washington, DC, April 22, 1991.

Ms. Betty Edmiston,
Chief, Administrative Services, U.S. Commission on Civil Rights, Washington, DC.

Dear Ms. Edmiston: I would like to update you on the status of space occupied by the U.S. Commission on Civil Rights (CCR) in Thomas Circle South, 1121 Vermont Avenue, NW, Washington, DC.

The lease for CCR's existing space expires November 22, 1992. This building at 1121 Vermont Avenue, NW, has extensive fire safety deficiencies. Due to the severity of these deficiencies, the General Services Administration (GSA) will not renew the lease. CCR will need to vacate the space at the expiration of the lease in November, 1992. The safety of Federal employees is a high priority for GSA; therefore, CCR will move to a building offering quality safety for its tenants.

We will continue communications for the development of your relocation space. If you have any questions regarding CCR's space, please do not hesitate to contact myself or Ms. Susan Shircliff of my staff on 708-9000.

Sincerely,
Ron Kendall,
Chief,
Assignment and Acquisition Branch.

- - - - - - - - - - - - - - - - - - - -

ADDITIONAL INFORMATION RELATED TO THE RELOCATION OF COMMISSION OFFICES IN WASHINGTON, DC

The Commission's relocation of its headquarters and Eastern Regional Division is being planned for October-November 1992, to coincide with the completion of the Judiciary Office Building and the expiration of our lease at 1121 Vermont Avenue, N.W. The General Services Administration

has advised that extensive fire safety deficiencies exist in our current location and that they will not extend our current lease.

In order to adequately prepare for our relocation which will occur very early in FY 93, contractual arrangements must be finalized and funds obligated in FY 92. Because leadtimes on acquisitions may take as long as four months from the time an order is placed until delivery, it is imperative that FY 92 funds be provided for relocation-related expenses.

We anticipate the largest relocation expense to be a one-time space build-out cost for drywall installation, carpeting, lighting, electrical and telephone outlets, locks, etc. At the current time, the General Services Administration is conducting discussions with the construction contractor for the Judiciary Office Building on build-out costs. While exact costs are not yet known, GSA informally advised that the original ballpark estimate was approximately $600,000.

In relocating the Commission's headquarters and Eastern Regional Division to the Judiciary Office Building, the General Services Administration reviewed space requirements for the Commission and made a final determination on the exact quantity of square feet to be allotted us. As a result, offices are being downsized and new, smaller size furniture is needed to ensure office efficiency and good space utilization. Exclusive of minor furniture purchases, the Commission has not acquired new furniture in many years. The acquisition of new furniture is required in FY 92 to ensure delivery, inspection, placement, and installation prior to our move in October-November. While the acquisition for furniture has not yet been initiated, we anticipate a FY 92 expense of approximately $500,000.

The Commission is currently utilizing an older telephone system which is no longer in production. Telecommunications consultants for the Judiciary Office Building have advised that our old, non-electronic system is not compatible with the telecommunications system wiring for the new building. The acquisition of a new telephone system, with an expense of approximately $170,000, will need to be finalized in FY 92 to ensure delivery, installation and the completion of testing prior to our relocation in October-November 1992.

In addition to the above, the Commission anticipates numerous other smaller dollar expenses related to the relocation. For example, new stationary and envelopes will have to be printed, computers and computer wiring will have to be de-installed and reinstalled, etc., prior to our move in October-November 1992. As with the other items noted above, acquisitions must be finalized in FY 92 to ensure timely delivery coinciding with our move.

Should funding not be made available in FY 92 for relocation-related expenses, the Commission would be forced to continue to reside in a location which has been determined unsafe for Federal employees. Attached for your information is a copy of the letter from GSA advising of the severity of the problems with our current space and informing us of our forced relocation.

[*S15308] Mr. SIMON. Mr. President, in fiscal years 1993 and 1994, no set authorization is specified in the Simon/Hatch amendment. Under current law, when the Commission is not authorized appropriations, it is required to terminate its operation. Under the Simon/Hatch amendment, this will not be the case. In the absence of further legislation that enacts a different level of appropriations for fiscal years 1993 or 1994, the current authorization of $7.159 million will remain in effect for each of those fiscal years.

While we certainly expect to be closely reviewing the Commission's operations and authorization, a failure on Congress' part to agree to subsequent authorizations will not require the Commission to shut down prior to September 30, 1994.

Mr. President, let me be clear about what we are doing today. As chairman of the Senate Subcommittee on the Constitution, I believe that the Commission has taken some positive steps forward since its last reauthorization. I am aware, however, that the Commission has not been restored to its previous and historic status as the widely regarded conscience of the Nation on civil rights matters. Under its new Chairman, Arthur Fletcher, the Commission has begun to work more in unison than it has in the past.

Many individuals on both sides of the aisle raised serious concerns about the lack of written work product from the Commission in the past few years. On the positive side, the Commission has issued reports on the Indian Civil Rights Act, economic status of black women, bigotry and violence on American college campuses, and other subjects. Its State advisory committees have also been active. The Commission has provided me a list of its accomplishments and I ask unanimous consent that it be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. COMMISSION ON CIVIL RIGHTS ACCOMPLISHMENTS DURING CURRENT AUTHORIZATION

REPORTS

The Indian Civil Rights Act Report.

The Economic Status of Black Women: An Exploratory Investigation.

Report of the U.S. Commission on Civil Rights on the Civil Rights Act of 1990.

Bigotry and Violence on American College Campuses.

Intimidation and Violence: Racial and Religious Bigotry in America.

STATE ADVISORY COMMITTEE REPORTS

Efforts to Promote Housing Integration in Atrium Village and the South Suburbs (IL).

Bigotry and Violence on Missouri's College Campuses (MO).

Bigotry and Violence on Nebraska's College Campuses (NE).

Reporting and Bias-Related Incidents in Pennsylvania (PA).

Implementing the 1988 Fair Housing Amendments Act (PA).

Bigotry and Violence in Rhode Island (RI).

Early Childhood Education Issues in Texas; Implications for Civil Rights (TX).

Housing and Utility Rate Issues on Reservations/North Dakota (ND).

Rights of the Hearing Impaired (IL).

Ageism Affecting the Hiring and Employment of Older Workers (VT).

Police-Community Relations in Tampa An Update (FL).

Recent Decisions of the Supreme Court and the Proposed Civil Rights Act of 1990 and 1991 (DE & PA).

Fair and Open Environment? Bigotry and Violence on College Campuses in California (CA).

In-School Segregation in North Carolina Public Schools (NC).

Reversing Political Powerlessness for Black Voters in South Carolina (SC).

Community Perspectives on the Massachusetts Civil Rights Act (MA).

Implementation in Arizona of the Immigration Reform and Control Act (AZ).

OTHER

Statement on the Elimination of Race Baiting in Election Campaigns.

Changing Perspectives on Civil Rights -- Nashville, TN.

Changing Perspectives on Civil Rights -- Los Angeles, CA.

Statement on Minority Scholarship.

Mr. SIMON. Mr. President, in light of the reasonable concerns about the Commission's reporting on Federal civil rights enforcement, the new bill requires the Commission to issue at least one report annually to the President and Congress on some aspect of this issue. We are mindful of the Commission's resources and do not expect this report to be exhaustive on every aspect of every Federal agency's civil rights enforcement role.

Nonetheless, the Commission's Chairman has testified that monitoring Federal civil rights enforcement is the Commission's No. 1 priority. Therefore, the bill expects annual reporting on this subject as a core responsibility of the Commission. If the Commission is successful in its mission, I expect its appropriations to grow in the future and the resources it can devote to both the substance of this report and additional reports will correspondingly grow.

Finally, Mr. President, let me say that the work of the Commission has never been as important as it is today. The Commission, since its inception in 1957, has taken this Nation and often led the Congress and the President through traumatic and challenging times on civil rights. As the fights for equality for African-Americans and women have been won, the Nation as a whole has gained. Clearly, the national effort in these areas is not over and the Commission's vigorous return to the effort is essential.

As the Nation becomes more diverse with growing populations of Hispanic and Asian-Americans, with more and more barriers to the workplace, schools, and accommodations for the disabled individuals dropping, and a greater understanding, even in recent weeks, of gender discrimination and sex harassment, additional challenges for true equality are ahead of us. We need a strong and independent U.S. Commission and Civil Rights to help guide the Nation as it has done before. The Commission ought to be looking at the conditions for these populations and taking the lead. It has started to do that in some areas but it needs to do more.

The Constitution Subcommittee will continue to monitor the progress on civil rights in the Nation and the Commission's role in that progress. This reauthorization bill enables the Commission to take an active role in civil rights over the next 3 years.

Mr. HATCH. Mr. President, I am pleased to have played a part in working out this compromise measure to preserve the U.S. Commission on Civil Rights. While it is far from a perfect measure, I believe it is worthy of the Senate's support. I want to commend Senator Paul Simon and his staff, Susan Kaplan, John Trasvina, and Brant Lee, for their efforts in preserving the Commission.

I earlier sponsored legislation extending the Commission for 10 years. I believed such an extension would stop the Commission from being a political football, always worrying about whether it will continue in existence for more than 1 or 2 years. Senator Simon favored a 4-year extension, also a reasonable extension. Unfortunately, the House of Representatives passed legislation extending the Commission's life for only 2 years, and slashing its already slender funding.

I am disappointed that we could only agree on a 3-year extension, with an authorization for funding for 1 year. It may be that there are those who wish to keep the Commission on a short leash, until it is brought to heel and reflect a monolithically liberal outlook, as it had prior to 1984.

I have also reluctantly agreed that the Commission be required to file an annual report on some aspect of Federal civil rights enforcement. While I have no quarrel with the requirement that the Commission file an annual report, I believe it infringes upon the independence of the Commission to dictate the subject of those reports. With its limited resources, the Commission will not have the flexibility to address new civil rights issues or more timely issues because of this specific mandate. It is ironic that some of those who purportedly were concerned about the Commission's independence in the 1980's now wish to infringe on that independence.

In order to resolve the dispute on these matters, I have agreed to support this compromise. But if the Commission continues to be used as a political football by those who wish it to toe a particular line, and if the Commission performs as if it has to toe that line in order to survive rather than reach independent findings, then I believe its future will remain in doubt for the foreseeable future.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing [*S15309] to the (No. 1276) in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3350), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## v. 137 Cong Rec H 9161: House of Representatives Debate on U.S. Commission on Civil Rights Reauthorization Act of 1991, 102 P.L. 167

LEXSEE 137 Cong Rec H 9161

Congressional Record -- House

Tuesday, November 5, 1991

102nd Cong. 1st Sess.

*137 Cong Rec H 9161*

REFERENCE: Vol. 137 No. 162

TITLE: U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991

SPEAKER: Mr. BROOKS; Mr. EDWARDS of California; Mr. HYDE; Mr. SENSENBRENNER

TEXT: Text that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the House on the floor.

[*H9161] Mr. BROOKS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill H.R. 3350.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Reauthorization Act of 1991".

SEC. 2. ANNUAL REPORT.

Section 5 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c) is amended by adding at the end of the following: "The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this Act, $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office.".

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975f) is amended by striking "1991" and inserting "1994".

SEC. 5. COMMISSION CHAIR AND VICE CHAIR.

Section 2(c), subsections (a), (d), and (f) of section 3 and section 6(f) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975(c), 1975a (a), (d), and (f), and 1975d(f)) are amended by striking "Chairman" each place the term appears and inserting "Chairperson".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. Brooks] will be recognized for 20 minutes, and the gentleman from Wisconsin [Mr. Sensenbrenner] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself 4 minutes.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I rise in support of H.R. 3350, the Civil Rights Commission Reauthorization Act of 1991. This legislation was adopted under suspension of the rules on October 1, and has returned in a form recently enacted by the Senate, after negotiations between the two bodies.

As amended, H.R. 3350 reauthorizes the U.S. Commission on Civil Rights for 3 years, through 1994, with a fiscal year 1992 authorization of $7,159,000 -- slightly above the fiscal year 1991 appropriation and the same amount that was appropriated by the House for 1992. An additional $1.2 million is provided to pay for the agency's move to new quarters later in this fiscal year, as required by the General Services Administration.

While this authorization does not require the agency to cut programs or staff, it prevents the Commission from expanding without first fulfilling its statutory mission to investigate discrimination. In addition, the legislation now requires the Commission to submit at least one report each year detailing Federal civil rights enforcement efforts. These provisions oblige the agency to allocate its resources wisely and, I trust, will secure the Commission's rerun to its factfinding mission.

Under this legislation, the agency must come back to this body next year, and the year after, for a new authorization. This requirement -- which was a common practice prior to the 1983 reauthorization -- will ensure closer congressional oversight of the Commission's activities.

Once again, I wish to compliment the gentleman from California, [Mr. Edwards], the chairman of the Civil and Constitutional Rights Subcomittee, for his excellent work on this important piece of legislation. I also commend the ranking minority member of the subcommittee, Mr. Hyde, for his leadership on this issue. Mr. Speaker, this legislation keeps alive the U.S. Commission on Civil Rights, as well as our determination that it can turn itself around before the next reauthorization. I urge the Members' support.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, the time has come to put the Civil Rights Commission out of its misery. The gentleman from Texas [Mr. Brooks], I think, hit the nail on the head when he has demonstrated very eloquently that this Commission has been nonproductive during the last 22-month authorization.

The bickering and squabbling that marked previous commissions has continued, and it seems to me that the only thing that this Commission has been able to do is to set forth a case for its reauthorization and the authorization of more of the taxpayers' scarce dollars to keep it in business until the end of fiscal year 1994.

I do not think that this Congress should buy the notion that if a commission does a bad job it ought to be reauthorized and it ought to be given a raise, and yet that is exactly what this particular piece of legislation does.

When this bill left the House on September 30, it contained an authorization of $6 million. Now, the authorization is $7.159 million for each of the next 3 years, and in addition, there is $1.2 million for relocation expenses of the Commission's central office as well as the eastern regional office. That includes money for new carpeting, money for new furnishings, money for furniture, and money for a new phone system.

When is this going to end? Certainly, if there ever was a case of putting a commission out of business, now is the time given the nonproductivity during the last 22-month authorization period.

When the Commission was reauthorized 2 years ago, it was put on strict probation. And if any criminal spent his probationary period like this Commission spent their probationary period, the probation officer would [*H9162] revoke the probation, and that would be the end of the matter.

Now, at the full committee markup on September 24, the chairman of the subcommittee, the gentleman from California [Mr. Edwards], pointed out during the last 2 years the Commission has issued only one report and has had no hearings and consultations. The Commission is attempting to take credit for the work of its State advisory committees, not the Commission itself, but the advisory committees that function in each of the 50 States, for a lot of its work product, and, frankly, that is shameful. Because that, in my opinion, is taking credit for work which they have not done at all.

I would hope that the Congress today would look very closely at this Commission to reject the motion to suspend the rules to increase the authorization that was approved by the House from the $6 million a year for 2 years to $7.159 million for the next 3 years as well as all of their office relocation expenses and then maybe we can start over from scratch and set up a commission that is really relevant that all of us are proud of.

The chairman of the committee, the gentleman from Texas [Mr. Brooks], is correct in saying that this Commission is in an elliptical orbit. It has been at the low end of the orbit for a long period of time. The question is whether we continue paying for it to be at the low end of the orbit.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I am happy to yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, it is on the end of the orbit; you know, it goes pretty close at times, when it goes like this, but when it is at the far end, that is where they have been.

What I was going to ask about really to my friend, the gentleman from Wisconsin [Mr. Sensenbrenner], is: Does the gentleman not think we might talk to the Committee on Appropriations and maybe, in their wisdom, they would cut that extra $1.1 million out of their appropriation and maybe the $1.2 million and let them take their new housing out of their $6 million? And they could just cut back a little bit like everybody else is having to do in my district.

Mr. SENSENBRENNER. Reclaiming my time, when I get back to my office, I will have a joint letter to the Committee on Appropriations typed up, and I hope that the gentleman would honor me by signing the letter, because I think it would have much more clout then.

Mr. BROOKS. If the gentleman will yield further, I think I will maybe just talk to them, but we will look at it.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Edwards].

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, I thank the chairman and the gentleman from Wisconsin [Mr. Sensenbrenner] for their remarks, because I think they are very valuable.

This is an important subject. The Civil Rights Commission has a long and honorable history. It was established by President Eisenhower in the Civil Rights Act of 1957. And for many years it was the eyes and ears of the Nation in identifying problems in the enforcement of the various civil rights laws and reporting their findings to the Congress and to the President and they did a splendid job. It was a necessary institution that earned its appropriation.

Now, this year, the Civil Rights Commission asked for a 10-year authorization and a $10 million appropriation for fiscal year 1992. The subcommittee held a hearing on this authorization request and after examining the Commission's work, we decided that $10 million was entirely too much. We concluded a 2-year extension and a $6 million authorization for fiscal year 1992 would give the Commission sufficient time and resources to carry out this statutory mandate. We believed they should postpone adding four new regional offices.

We thought that they ought to earn those new offices with good work. They showed us that changes have been made. There is a new Chairman of the Commission, Mr. Fletcher, who has a distinguished history in civil rights, and a new staff director. They claim they are new brooms, and that they are going to sweep the place out and go back to the factfinding and reporting mandated by their charter.

The Senate wanted to give them more money than the $6 million that the House authorized. We worked with the Senate, and finally came upon the figure of $7.159 million -- the same amount designated by the Congress in the State, Justice appropriations bill.

This amount allows them to maintain their staff and their work at current levels. They are on probation, Mr. Speaker. They have been warned, but the subcommittee felt that it was not in the best interests of the civil rights movement or the great civil rights laws that have meant so much to this country and have been the envy of the world. We are, after all, a society of diverse people and different cultures, colors, and religions.

We have difficult problems ahead. We need institutions like a Civil Rights Commission to help tackle these problems. But we need a Civil Rights Commission that is back in the factfinding business.

So they are on probation. They are going to have enough money to continue at present levels.

We are going to monitor them very carefully over the 3 years. We are not giving them the carte blanche they wanted.

MR. SPEAKER, I SUPPORT THE SENATE AMENDMENT TO H.R. 3350, THE U.S. COMMISSION ON CIVIL RIGHTS REAUTHORIZATION ACT OF 1991.

THE AMENDMENT EXTENDS THE COMMISSION'S LIFE FOR A REASONABLE PERIOD, PROVIDES FOR AN ANNUAL AUTHORIZATION OF APPROPRIATIONS, DIRECTS AT LEAST ONE ANNUAL REPORT MONITORING FEDERAL CIVIL RIGHTS ENFORCEMENT, AND SUBSTITUTES, "CHAIRPERSON" FOR "CHAIRMAN" THROUGHOUT THE STATUTE.

MR. SPEAKER, THE CURRENT REAUTHORIZATION DEBATE IS NOT ABOUT WHETHER THE NATION NEEDS A FEDERAL CIVIL RIGHTS FACTFINDING AGENCY. WE DO. THE DEBATE IS WHETHER THE U.S. COMMISSION ON CIVIL RIGHTS IS THE RIGHT AGENCY FOR THAT JOB.

FOR 25 YEARS, THE BIPARTISAN, INDEPENDENT COMMISSION WAS THE PREMIER FEDERAL CIVIL RIGHTS FACTFINDING AGENCY. IT ABANDONED THAT MISSION IN THE 1980'S, BECOMING NOTHING MORE THAN A PLATFORM FOR DIVISIVE RHETORIC BY COMMISSION MEMBERS.

DURING THE 1989 REAUTHORIZATION, CONGRESS TOOK A GAMBLE THAT WITH NEW MEMBERSHIP, LEADERSHIP, AND MANAGEMENT, IT WOULD GET BACK TO ITS MANDATE. TO THE COMMISSION'S CREDIT, THE DIVISIVE RHETORIC IS GONE AND FISCAL MANAGEMENT HAS IMPROVED. BUT VIRTUALLY NO FACTFINDING HAS BEEN DONE IN THE PAST 2 YEARS -- NO HEARINGS, NO CONSULTATIONS AND ONLY ONE REPORT -- ON WORK ALREADY IN PROGRESS BEFORE THE 1989 REAUTHORIZATION.

CONGRESS HAS REJECTED THE COMMISSION'S APPEAL FOR A 10-YEAR REAUTHORIZATION AND UNLIMITED FUNDS.

H.R. 3350, AS PASSED BY THE HOUSE, CONTINUES THE AGENCY FOR 2 YEARS AND PROVIDES $6 MILLION IN APPROPRIATIONS FOR EACH FISCAL YEAR.

THE SENATE'S BILL EXTENDS THE COMMISSION'S LIFE FOR 4 YEARS, AUTHORIZES UNLIMITED FUNDS FOR EACH FISCAL YEAR, DIRECTS PUBLICATION OF AT LEAST ONE ANNUAL REPORT ON THE STATUS OF CIVIL RIGHTS IN THE

UNITED STATES, AND SUBSTITUTES "CHAIR" FOR "CHAIRMAN" WHEREVER IT APPEARS IN THE STATUTE.

TODAY, WE CONSIDER THE COMPROMISE AMENDMENT NEGOTIATED WITH SENATE SPONSORS WHICH I SUPPORT. THIS COMPROMISE EXTENDS THE COMMISSION'S LIFE FOR 3 YEARS, PROVIDES $7,159,000 IN APPROPRIATIONS FOR FISCAL YEAR 1992 -- FUTURE AUTHORIZATIONS OF APPROPRIATIONS WILL BE REQUIRED ANNUALLY -- DIRECTS PUBLICATION OF AT LEAST ONE ANNUAL REPORT MONITORING FEDERAL CIVIL RIGHTS ENFORCEMENT, AND SUBSTITUTES "CHAIRPERSON" FOR "CHAIRMAN" WHEREVER IT APPEARS IN THE UNDERLYING STATUTE.

THE SENATE AMENDMENT'S REAUTHORIZATION AND APPROPRIATION PROVISIONS GIVE THE COMMISSION SUFFICIENT TIME AND RESOURCES TO DEMONSTRATE IT IS AGAIN MEETING ITS FACTFINDING MANDATE. A REVIEW OF AGENCY SUBMISSIONS AND COMMISSIONER MEETINGS OVER THE PAST 2 YEARS SHOWS IT HAS BEEN GROPING TO FIND A FOCUS FOR THIS FACTFINDING MANDATE. THE CONGRESS BELIEVES A PART OF THAT MANDATE SHOULD INCLUDE RESUMPTION OF THE ENFORCEMENT SERIES. FLEXIBILITY AND DISCRETION IS GIVEN TO THE COMMISSION TO ELECT THE TOPIC AND AGENCY OR DEPARTMENTS [*H9163] FOR REVIEW, BUT CONGRESS IS GUARANTEED AT LEAST ONE ANNUAL REPORT WHICH MONITORS EXECUTIVE BRANCH ENFORCEMENT OF FEDERAL CIVIL RIGHTS LAWS.

MR. SPEAKER, ALTHOUGH IT IS NOT OBLIGATED TO ISSUE MORE THAN ONE MONITORING REPORT ANNUALLY, THE COMMISSION WOULD BE WISE TO DO MORE, THAT IS, TO HOLD HEARINGS, CONDUCT CONSULTATIONS, AND ISSUES REPORTS. AFTER ABANDONING ITS FACTFINDING RESPONSIBILITIES FOR ALMOST A DECADE, THE COMMISSION MUST AFFIRMATIVELY CONVINCE THE 103D CONGRESS THAT IT SHOULD BE REAUTHORIZED BEYOND FISCAL YEAR 1994. IF IT FAILS TO DO SO, THEN IT SHOULD BE PREPARED FOR THAT CONGRESS TO FIND SOME OTHER ENTITY TO CARRY OUT THIS FUNCTION.

THE COMMISSION PLANNED TO AUGMENT ITS REGIONAL OFFICE STRUCTURE BY ADDING FOUR MORE OFFICES IN FISCAL YEAR 1992. IT WILL NOT BE ABLE TO DO SO UNDER THIS APPROPRIATION. THE $7,159,000 AUTHORIZED FOR THE CURRENT FISCAL YEAR MAINTAINS THE AGENCY AT CURRENT LEVELS -- NO CUTS IN STAFF AND PROGRAMS WILL RESULT -- BUT PLANS TO ESTABLISH ADDITIONAL OFFICES MUST BE POSTPONED UNTIL CONGRESS IS CONVINCED THE COMMISSION IS BACK IN BUSINESS.

THE COMMITTEE ON THE JUDICIARY WILL ALSO BE REQUIRED TO AUTHORIZE THE COMMISSION'S REQUEST FOR AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1993 AND 1994. THIS REPRESENTS RESUMPTION OF CONGRESSIONAL REVIEW AND ACTION OF THE COMMISSION'S REQUEST FOR APPROPRIATIONS BY BOTH THE AUTHORIZATION AND APPROPRIATION COMMITTEES TO INSURE THAT THE HOUSE AND SENATE HAVE ENACTED AN AUTHORIZATION OF APPROPRIATIONS AT THE APPROPRIATE LEVEL.

ANNUAL REVIEWS OF THIS TYPE WERE A COMMON PRACTICE IN PREVIOUS AUTHORIZING LEGISLATION. IT ASSURES ANNUAL CONGRESSIONAL OVERSIGHT OF THE AGENCY'S BUDGET, PROGRAMS, AND ACCOMPLISHMENTS. IF THE COMMISSION CAN DEMONSTRATE IT IS MEETING ITS STATUTORY MANDATE, THE CONGRESS MAY DECIDE IT IS TIME TO EXPAND THE AGENCY'S RESOURCES AND PROGRAMS.

MR. SPEAKER, THIS IS A GOOD COMPROMISE, AND I HOPE THAT THE COMMISSION APPRECIATES IT IS TIME TO PRODUCE A TANGIBLE RECORD OF CIVIL RIGHTS FACTFINDING OVER THE NEXT 3 YEARS. I URGE YOU TO ADOPT H.R. 3350 AS AMENDED.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. Hyde].

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, the Senate amendment to H.R. 3350 is evidence of the bipartisan consensus that the work of the Civil Rights Commission is needed. The compromise reauthorizes the Commission for 3 years, provides for an increased appropriation of $7,159,000 for the current fiscal year and requires the Commission to publish at least one annual report monitoring Federal civil rights enforcement.

Mr. Speaker, I think it is clear there exists serious political controversy over this Commission, so I think we do need to stress that the issue before us is really not one of ideology, but management.

During the last 22-month reauthorization period, the Commission has held one briefing and no hearings. Although there have been 17 reports issued by the State advisory committees, the Commission itself issued no reports within its statutory mandate and on the whole has produced very little in the way of performing its factfinding duties.

The Commission has, however, done a great deal to rehabilitate its reputation and to reestablish its network of regional offices which had been closed during cutbacks in the 1980's. It is struggling to reestablish its factfinding focus and carefully utilize its resources. We support this effort.

This Nation needs a bipartisan, objective, and informed voice on the sensitive issues of civil rights. The majority in Congress still believe that the U.S. Commission on Civil Rights is the best entity to perform this function and so I urge my colleagues to accept the Senate amendment to H.R. 3350.

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to make the point that we are reauthorizing the Commission until 1994, but we are just authorizing money for 1 year. So they will have to come back next year and get an authorization for any money that they are going to get. The same would be for the year after that. if they do not do better than they have been doing, they are going to be wasting a lot of their time as well as our money.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, one of the features in the Senate amendment that we are debating today amends the current law that says at present the Commission cannot function without authorization. In other

words, it is a mandatory sunset and it requires the Congress to reauthorize the Commission in order for it to continue in existence.

Under the Senate amendment, the Commission can stay on forever without affirmative legislation, under continuing resolutions.

I believe that takes away the club of this Congress over the Commission to start spending the taxpayers' money wisely and to start producing something for the over $7 million that is being authorized in this bill.

Now, with the Senate amendment, should it be enacted into law, it will mean that this Commission can keep on rolling like Old Man River, not functioning at all unless and until the Congress passes an affirmative law abolishing the Commission. I think that is wrong.

I think given the fact that none of the speakers today who have the most familiarity with this Commission have given it a glowing endorsement, every one of the speakers on the floor has said that the Commission has got its problems, every one of them says that the Commission is on probation.

I disagree with my friend, the gentleman from Texas [Mr. Brooks] that the broom is new, because Mr. Fletcher has been the chairman of the Commission for 1 1/2 years, and we have not seen this Commission turn around since he took over the chairmanship.

The time I believe has come to reject concurring in the Senate amendment.

Now, that does not necessarily kill the Commission. That means we can set up a conference with the other body and perhaps change this feature that allows the Commission to continue so that we can have them on a short chain should we decide to reauthorize it. Failing that, I believe the Senate amendment should be rejected and we can continue with the procedure.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, I want to say to my friend that it is my conviction that this reauthorizes the Commission only until 1994. The language in our bill has every intent of doing just that and that only.

But I would say that we are certainly going to take a very hard look at it again next year. I anticipate that both the gentleman and I will be on that same committee evaluating their efforts with that new, old, or used broom that they have.

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentleman from Texas, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Espy). The question is on the motion offered by the gentleman from Texas [Mr. Brooks] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3350.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

## vi. Legislative History of 102 P.L. 167

LEXSEE 102 CIS Legis. Hist. P.L. 167



*91 CIS PL 102167; 102 CIS Legis. Hist. P.L. 167*

LEGISLATIVE HISTORY OF: P.L. 102-167

TITLE: U.S. Commission on Civil Rights Reauthorization Act of 1991

CIS-NO: 91-PL102-167

DOC-TYPE: Legislative History

DATE: Nov. 26, 1991

LENGTH: 1 p.

ENACTED-BILL: 102 H.R. 3350 Retrieve Bill Tracking report

STAT: 105 Stat. 1101

CONG-SESS: 102-1

ITEM-NO: 575

SUMMARY:
"To extend the United States Commission on Civil Rights."

Authorizes FY92 appropriations, establishes certain reporting requirements, and amends the U.S. Commission on Civil Rights Act of 1983 to terminate the Commission in 1994.

CONTENT-NOTATION: Civil Rights Commission programs, FY92 authorization

BILLS: 102 S. 1264

DESCRIPTORS: COMMISSION ON CIVIL RIGHTS; CIVIL RIGHTS; U.S. COMMISSION ON CIVIL RIGHTS ACT

REFERENCES:

DEBATE:

137 Congressional Record, 102nd Congress, 1st Session - 1991
Sept. 30, House consideration and passage of H.R. 3350.
Oct. 28, Senate consideration and passage of H.R. 3350 with an amendment.
Nov. 5, House consideration of H.R. 3350.
Nov. 6, House concurrence in the Senate amendment to H.R. 3350.

HEARINGS:

102nd Congress

Hearings on S. 1264 before the Subcommittee on the Constitution, Senate Judiciary Committee, June 12, 1991. (Not available at time of publication.)

"Reauthorization of the U.S. Commission on Civil Rights," hearings before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary. House, July 25, 1991.

## vii) Tracking Report of Legislation

*BILL TRACKING REPORT HR 3350*



BILL TRACKING REPORT

102nd Congress
1st Session

U. S. House of Representatives

HR 3350

102 Bill Tracking H.R. 33501991 Bill Tracking H.R. **3350**

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1991

Retrieve full text version

**SPONSOR:** Representative Don Edwards D-CA

**DATE-INTRO:** September 17, 1991

**LAST-ACTION-DATE:** November 26, 1991

**STATUS:** Became public law (P. L. 102-167)

**TOTAL-COSPONSORS:** 1 Cosponsors: 0 Democrats / 1 Republicans

**SYNOPSIS:** A bill to extend the U.S. Commission on Civil Rights.

**ACTIONS:**
Committee Referrals:
09/17/91 House Judiciary Committee

Legislative Chronology:

1st Session Activity:
09/17/91 137 Cong Rec H 6674
Referred to the House Judiciary Committee
09/24/91 137 Cong Rec D 1143
House Judiciary Committee ordered reported
09/30/91 137 Cong Rec H 7088
House agreed to suspend the rules and pass, by voice vote
10/15/91 137 Cong Rec S 14706
House requested the concurrence of the Senate
10/15/91 137 Cong Rec S 14706
Placed on the Senate calendar
10/28/91 137 Cong Rec S 15299
Simon (and Hatch) Amendment No. 1276, submitted
10/28/91 137 Cong Rec S 15306
Passed in the Senate, after agreeing to an amendment proposed thereto, by voice vote
10/28/91 137 Cong Rec S 15307

Senate adopted Mitchell (for Simon/Hatch) Amendment No. 1276, in the nature of a substitute, by voice vote

10/29/91 137 Cong Rec H 8579
Senate requested the concurrence of the House

11/05/91 137 Cong Rec H 9161
House completed all general debate on the motion to suspend the rules and agree to the Senate amendment to the bill, on which the vote was postponed until Wednesday, November 6

11/06/91 137 Cong Rec H 9416
House voted to suspend the rules and pass, by a recorded vote of 420 yeas and 7 nays (Roll No. 378), this motion was debated on Tuesday, November 5 -- Clearing the measure for the President

11/12/91 137 Cong Rec H 9699
Enrolled in the House

11/13/91 137 Cong Rec S 16610
Enrolled in the Senate

11/14/91 137 Cong Rec H 10267
Presented to the President

11/26/91 137 Cong Rec D 1533
Signed by the President (P. L. 102-167)

**BILL-DIGEST:**
(from the CONGRESSIONAL RESEARCH SERVICE)
1028/91 (Measure passed Senate, amended ) United States Commission on Civil Rights Reauthorization Act of 1991 Amends the United States Commission on Civil Rights Act of 1983 to mandate an annual report to the Congress and the President on Federal civil rights enforcement. Authorizes appropriations and extendsthe termination date of the Act.

CRS Index Terms:

Civil rights; Congressional reporting requirements; Executive departments--Authorization; Government paperwork

**CO-SPONSORS:**

Original Cosponsors:

Hyde R-IL

## 3. 102 P.L. 400 (1992)

## i. Text of 102 P.L. 400

LEXSEE 102 P.L. 400

UNITED STATES PUBLIC LAWS
102ND CONGRESS-SECOND SESSION


PUBLIC LAW 102-400 [H.R. 5399]
OCTOBER 7, 1992
UNITED STATES COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT OF 1992

*102 P.L. 400; 106 Stat. 1955; 1992 Enacted H.R. 5399; 102 Enacted H.R. 5399*

BILL TRACKING REPORT: 102 Bill Tracking H.R. 5399
FULL TEXT VERSION(S) OF BILL: 102 H.R. 5399
CIS LEGIS. HISTORY DOCUMENT: 102 CIS Legis. Hist. P.L. 400

An Act

To amend the United States Commission on Civil Rights Act of 1983 to provide an authorization of appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1]
SECTION 1. *<42 USC 1975* note> SHORT TITLE.

This Act may be cited as the "United States Commission on Civil Rights Authorization Act of 1992".

[*2]
SEC. 2. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 *(42 U.S.C. 1975e)* is amended by adding at the end the following: "There are authorized to be appropriated to carry out this Act $ 7,422,014 for fiscal year 1993, and an additional $ 850,000 for fiscal year 1993 to

relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.".

Speaker of the House of Representatives.
Vice President of the United States and
President of the Senate.

## ii. Legislative History of 102 P.L. 400

LEXSEE 102 CIS Legis. Hist. P.L. 400



*92 CIS PL 102400; 102 CIS Legis. Hist. P.L. 400*

LEGISLATIVE HISTORY OF: P.L. 102-400

TITLE: United States Commission on Civil Rights Authorization Act of 1992

CIS-NO: 92-PL102-400

DOC-TYPE: Legislative History

DATE: Oct. 7, 1992

LENGTH: 1 p.

ENACTED-BILL: 102 H.R. 5399 Retrieve Bill Tracking report

STAT: 106 Stat. 1955

CONG-SESS: 102-2

ITEM-NO: 575

SUMMARY:
"To amend the United States Commission on Civil Rights Act of 1983 to provide an authorization of appropriations."

Authorizes FY93 appropriations.

CONTENT-NOTATION: Civil Rights Commission programs, FY93 authorization

DESCRIPTORS: COMMISSION ON CIVIL RIGHTS; CIVIL RIGHTS; U.S. COMMISSION ON CIVIL RIGHTS ACT

REFERENCES:

DEBATE:

138 Congressional Record, 102nd Congress, 2nd Session - 1992
Aug. 3, House consideration and passage of H.R. 5399.
Sept. 29, Senate consideration and passage of H.R. 5399.

REPORTS:

102nd Congress

H. Rpt. 102-770 on H.R. 5399, "U.S. Commission on Civil Rights Authorization Act of 1992," Aug. 3, 1992.
CIS NO: 92-H523-9
LENGTH: 5 p.
SUDOC: Y1.1/8:102-770

HEARINGS:

102nd Congress

Hearings on authorization for the U.S. Commission on Civil Rights before the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, Mar. 19, 1992. (Not available at time of publication.)

## iii. Tracking Report on Legislation

*BILL TRACKING REPORT HR 5399*



BILL TRACKING REPORT

102nd Congress
2nd Session

U. S. House of Representatives

HR 5399

102 Bill Tracking H.R. 53991992 Bill Tracking H.R. **5399**

UNITED STATES COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT

Retrieve full text version

**SPONSOR:** Representative Don Edwards D-CA

**DATE-INTRO:** June 16, 1992

**LAST-ACTION-DATE:** October 7, 1992

**STATUS:** Became public law (P. L. 102-400)

**TOTAL-COSPONSORS:** 0 Cosponsors

**SYNOPSIS:** A bill to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations.

**ACTIONS:**
Committee Referrals:
06/16/92 House Judiciary Committee
08/05/92 Senate Judiciary Committee

Legislative Chronology:

1st Session Activity:

2nd Session Activity:
06/16/92 138 Cong Rec H 4754
Referred to the House Judiciary Committee
07/22/92 138 Cong Rec D 900
House Judiciary Committee ordered reported
08/03/92 138 Cong Rec H 7198
House voted to suspend the rules and pass, by voice vote
08/03/92 138 Cong Rec H 7255
Reported in the House (H. Rept. 102-770)

08/05/92 138 Cong Rec S 11600
House requested the concurrence of the Senate
08/05/92 138 Cong Rec S 11600
Referred to the Senate Judiciary Committee
09/17/92 138 Cong Rec D 1133
Senate Judiciary Committee ordered favorably reported
09/17/92 138 Cong Rec S 13878
Reported in the Senate
09/29/92 138 Cong Rec D 1224
Passed in the Senate, by voice vote -- clearing the measure for the President
09/29/92 138 Cong Rec S 15645
Passed in the Senate, by voice vote
09/30/92 138 Cong Rec H 10012
Enrolled in the House
09/30/92 138 Cong Rec S 15880
Enrolled in the Senate
10/01/92 138 Cong Rec H 10099
Enrolled in the House on September 30, 1992
10/07/92 138 Cong Rec D 1317
Signed by the President on October 7, 1992, (P.L. 102-400)

**BILL-DIGEST:**
(from the CONGRESSIONAL RESEARCH SERVICE)
United States Commission on Civil Rights Authorization Act of 1992 Amends the United States Commission on Civil Rights Act of 1983 to authorize appropriations to: (1) carry out the Act; and (2) relocate the headquarters office. Prohibits use of those funds to create additional regional offices.

CRS Index Terms:

Civil rights; Authorization; Executive departments

**CO-SPONSORS:**
No cosponsors have been added to HR 5399

## 4. 103 P.L. 419 (1994)

## i. Text of 103 P.L. 419

LEXSEE 103 P.L. 419

UNITED STATES PUBLIC LAWS
103RD CONGRESS-SECOND SESSION


PUBLIC LAW 103-419 [S. 2372]
OCTOBER 25, 1994
CIVIL RIGHT COMMISSION AMENDMENTS ACT OF 1994

*103 P.L. 419; 108 Stat. 4338; 1994 Enacted S. 2372; 103 Enacted S. 2372*

BILL TRACKING REPORT: 103 Bill Tracking S. 2372
FULL TEXT VERSION(S) OF BILL: 103 S. 2372
CIS LEGIS. HISTORY DOCUMENT: 103 CIS Legis. Hist. P.L. 419

An Act

To amend the United States Commission on Civil Rights Act of 1983.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. <*42 USC 1975* note> SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

[*2] SEC. 2. AMENDMENT OF 1983 ACT.

That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. <*42 USC 1975* note> SHORT TITLE.

"This Act may be cited as the 'Civil Rights Commission Act of 1983'.

"Sec. 2. <*42 USC 1975*> ESTABLISHMENT OF COMMISSION.

"(a) Generally.--There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the 'Commission').

"(b) Membership.--The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September

30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms.--The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission [**4339] in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson.--(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) Removal of Members.--The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) Quorum.--5 members of the Commission constitute a quorum of the Commission.

"Sec. 3. *<42 USC 1975a>* DUTIES OF THE COMMISSION.

"(a) Generally.--The Commission--

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations--

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

"(2) shall--

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) Limitations on Investigatory Duties.--Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) Reports.--

"(1) Annual report.--The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) Other reports generally.--The Commission shall submit such other reports to the President and the Congress [**4340] as the Commission, the Congress, or the President shall deem appropriate.

"(d) Advisory Committees.--The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

"(e) Hearings and Ancillary Matters.--

"(1) Power to hold hearings.--The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) Power to issue subpoenas.--The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) Witness fees.--A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) Depositions and interrogatories.--The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) Limitation Relating to Abortion.--Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information

about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"Sec. 4. *<42 USC 1975b>* ADMINISTRATIVE PROVISIONS.

"(a) Staff.--

"(1) Director.--There shall be a full-time staff director for the Commission who shall--

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission.

"(2) Other personnel.--Within the limitation of its appropriations, the Commission may--

[**4341] "(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) Compensation of Members.--

"(1) Generally.--Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on a daily basis for time spent in the work of the Commission.

"(2) Persons otherwise in government service.--Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) Voluntary or Uncompensated Personnel.--The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) Rules.--

"(1) Generally.--The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) Continuation of old rules.--Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) Cooperation.--All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"Sec. 5. *<42 USC 1975c>* AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated, to carry out this Act $ 9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

[**4342] "Sec. 6. *<42 USC 1975d>* TERMINATION.

"This Act shall terminate on September 30, 1996.".

Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.

## ii. 140 Cong Rec S 11045: Remarks by Senator Simon

LEXSEE 140 Cong Rec S 11045

CONGRESSIONAL RECORD -- *Senate*

Tuesday, August 9, 1994
(Legislative day of Monday, August 8, 1994)

103rd Congress 2nd Session

*140 Cong Rec S 11045*

REFERENCE: Vol. 140 No. 109

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

TEXT:

[*S11045]

By Mr. SIMON:

S. 2372. A bill to reauthorize for 3 years the Commission on Civil Rights, and for other purposes; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1994

Mr. SIMON. Mr. President, I introduce legislation to reauthorize the U.S. Commission on Civil Rights. The authorization for the Commission expires on September 30, 1994, and the Constitution Subcommittee, which I chair, has jurisdiction over reauthorization.

Since 1957, when the U.S. Commission on Civil Rights was first established, our Nation has made considerable progress in fulfilling the promise of equal rights. But the problems of discrimination have hardly been solved; in many ways, they have just grown more complex. The Nation continues to need a Civil Rights Commission that is true to its original purpose as an independent, nonpartisan, factfinding agency.

Mr. President, it is no secret that there have been some problems at the Commission over the years, particularly during the 1980's. Many who have worked tirelessly in the civil rights community for years, and who have observed and worked with the Commission during that time, continue to have some skepticism about the work of the Commission. Frankly, the Commission needs to do a better job of reaching out to the organizations and communities with which it has worked closely in the past.

The U.S. Commission on Civil Rights should not just react to the civil rights issues of the day, but should provide leadership on these issues. It is my hope that the Commission can once again raise the consciousness of the Nation on civil rights matters. I believe that the Commission is now headed in that direction.

The legislation I introduce today will reauthorize the Commission for a 3 year period through the end of fiscal year 1997. It retains the mission and organizational structure of the Commission but authorizes the preparation of public service announcements and advertising campaigns to discourage discrimination or the denial of equal protection of the laws based on color, race, religion, sex, age, disability, or national origin.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record , as follows:

S. 2372 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Reauthorization Act of 1994".

SEC. 2. COMMISSION ON CIVIL RIGHTS.

Section 5(a) of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975c(a)) is amended to read as follows:

"(a) Investigatory and Other Duties.- The Commission shall-

"(1) investigate allegations, in writing, under oath or affirmation, relating to deprivations of civil rights based on color, race, religion, sex, age, disability, or national origin, or as a result of any pattern or practice or fraud, or denial of the right to vote and have votes counted; and

"(2) study, collect, make appraisals of, serve as a national clearinghouse for information on, and prepare public service announcements and advertising campaigns to discourage discrimination or the denial of equal protection of the laws, including the administration of justice, based on color, race, religion, sex, age, disability, or national origin.".

SEC. 3. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act (42 U.S.C. 1975e) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this Act $ 9,500, 000 for fiscal year 1995.

SEC. 4. TERMINATION.

Section 8 of the United States Commission on Civil Rights Act (42 U.S.C. 1973f) is amended by striking "1994" and inserting "1997".

## iii. House Report 103-775: Civil Rights Commission Amendments of 1994

LEXSEE 103 h rpt 775



Committee Reports

103d Congress, 2nd Session

House Rept. 103-775

*103 H. Rpt. 775*

CIVIL RIGHTS COMMISSION AMENDMENTS OF 1994

DATE: October 3, 1994. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

SPONSOR: Mr. Brooks, from the Committee on the Judiciary, submitted the following

REPORT

(To accompany H.R. 4999)

(Including cost estimate of the Congressional Budget Office)

TEXT:

The Committee on the Judiciary, to whom was referred the bill (H.R. 4999) to amend the United States Commission on Civil Rights Act of 1983, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE. This Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

SEC. 2. AMENDMENT OF 1983 ACT. That the portion of the United States Commission on Civil Rights Act of 1983 which follows the enacting clause is amended to read as follows:

"SECTION 1. SHORT TITLE. "This Act may be cited as the ivil Rights Commission Act of 1983.

"SEC. 2. ESTABLISHMENT OF COMMISSION. "(a) Generally. There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the ommission).

"(b) Membership. The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

"(1) 4 members of the Commission shall be appointed by the President.

"(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

"(c) Terms. The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

"(d) Chairperson. (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

"(2) Thereafter the President may, with the concurrence of a majority of the Commissions members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

"(3) The President shall, with the concurrence of a majority of the Commissions members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

"(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

"(e) Removal of Members. The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

"(f) Quorum. 5 members of the Commission constitute a quorum of the Commission.

"SEC. 3. DUTIES OF THE COMMISSION. "(a) Generally. The Commission

"(1) shall investigate allegations in writing under oath or affirmation relating to deprivations

"(A) because of color, race, religion, sex, age, disability, or national origin; or

"(B) as a result of any pattern or practice of fraud;of the right of citizens of the United States to vote and have votes counted; and

"(2) shall

"(A) study and collect information relating to;

"(B) make appraisals of the laws and policies of the Federal Government with respect to;

"(C) serve as a national clearinghouse for information relating to; and

"(D) prepare public service announcements and advertising campaigns to discourage;discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

"(b) Limitations on Investigatory Duties. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

"(c) Reports.

"(1) Annual report. The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

"(2) Other reports generally. The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

"(d) Advisory Committees. The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

"(e) Hearings and Ancillary Matters.

"(1) Power to hold hearings. The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

"(2) Power to issue subpoenas. The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

"(3) Witness fees. A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(4) Depositions and interrogatories. The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"(f) Limitation Relating to Abortion. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information

about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

"SEC. 4. ADMINISTRATIVE PROVISIONS. "(a) Staff.

"(1) Director. There shall be a full-time staff director for the Commission who shall

"(A) serve as the administrative head of the Commission; and

"(B) be appointed by the President with the concurrence of a majority of the Commission.

"(2) Other personnel. Within the limitation of its appropriations, the Commission may

"(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

"(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

"(b) Compensation of Members.

"(1) Generally. Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

"(2) Persons otherwise in government service. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such members usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

"(c) Voluntary or Uncompensated Personnel. The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

"(d) Rules.

"(1) Generally. The Commission may make such rules as are necessary to carry out the purposes of this Act.

"(2) Continuation of old rules. Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

"(e) Cooperation. All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

"SEC. 5. AUTHORIZATION OF APPROPRIATIONS. "There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

"SEC. 6. TERMINATION. "This Act shall terminate on September 30, 1995.".

Explanation of Amendment

Inasmuch as H.R. 4999 was reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

Summary and Purpose

The purpose H.R. 4999 is to reauthorize the United States Commission on Civil Rights for one year.

Hearings

The Subcommittee on Civil and Constitutional Rights held a hearing on February 9, 1994 to consider the need to reauthorize the United States Commission on Civil Rights (the Commission). Presenting testimony in support of the Commissions request for reauthorization was Dr. Mary Frances Berry, Chairperson of the Commission, accompanied by Commissioner Carl A. Anderson, and Stuart J. Ishimaru, Acting Staff Director.

Committee Action

On August 17, 1994, the Subcommittee on Civil and Constitutional Rights favorably ordered reported a committee print, which was subsequently introduced as H.R. 4999 on August 19, 1994, to reauthorize the Commission.

The Full Committee on the Judiciary considered H.R. 4999 on September 29, 1994, and by voice vote, a reporting quorum being present, ordered that it be favorably reported with an amendment to the full House.

Discussion

Background and Need for Legislation

The United States Commission was first established by the Civil Rights Act of 1957. It is the only bi-partisan, independent Federal fact-finding agency considering discrimination and the denial of equal protection of laws based on race, color, religion, sex, age, handicap, national origin or in the administration of justice.

Concerns about the Commissions independence in the early 1980s lead to compromise legislation "reconstituting" it in 1983.

H.R. 4999, as reported, more concisely rewrites the 1983 legislation. For example, it eliminates provisions of the 1983 Act regarding the conduct of Commission hearings. The provisions are unnecessary because the Commissions hearings are subject to the Sunshine in Government Act.

Since the Commission has no enforcement authority, the force of its work has come from its scholarly reports. The Committee expects that the modest increase in appropriations authorized by this bill will enhance the Commissions ability to return to its fact-finding mandate.

Section-by-Section Analysis

Following is a section-by-section analysis of the Civil Rights Commission Amendments Act of 1994.

Section 1. Short Title

This section establishes that the Act may be cited as the "Civil Rights Commission Amendments Act of 1994".

Section 2. Amendment of 1983 Act

This section establishes that all after the enacting clause of the United States Commission on Civil Rights Act of 1983 is amended.

"Section 1. Short Title

This section refers to the title of the Act being amended, the "Civil Rights Commission Act of 1983".

"Section 2. Establishment of Commission

This section establishes the United States Commission on Civil Rights. It sets out the particulars with respect to the membership, method of selection, and terms of the members of the Commission. The section sets forth the method for designating the Chairperson, and the Vice Chairperson. It also sets forth the grounds for removal of members of the Commission and establishes the number of members constituting a quorum.

"Section 3. Duties of the Commission

This section restates the Commissions longstanding factfinding duties with respect to discrimination and denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin or in the administration of justice. The Commission is granted new authority to prepare public service announcements and advertising campaigns to discourage discrimination.

The section states that Commission shall issue reports to the President and Congress.

Provision is also made for the establishment of State Advisory Committees.

The Commission is authorized to conduct hearings, issue subpoenas, and provide for witness fees. It may also utilize depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

"section 4. administrative provisions

This section provides for the staff of the Commission including the appointment of the staff director. It authorizes the compensation of members of the Commission, and prohibits the Commission from accepting or using the services of voluntary or uncompensated persons including the commissioners.

The Commission is authorized to makes rules necessary to carry out the purposes of the act.

Federal agencies shall cooperate fully with the Commission.

"section 5. authorization of appropriations

The section authorizes an appropriation of $9,500,000 for fiscal year 1995 and prohibits the use of those funds to create additional regional offices.

"section 6. termination

The section provides that the act terminates on September 30, 1995."

Committee Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Committee on Government Operations Oversight Findings

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

New Budget Authority and Tax Expenditures

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority of increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 4999, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 30, 1994.
Hon. Jack Brooks,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4999, the Civil Rights Commission Amendments Act of 1994.

Enactment of H.R. 4999 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,
Robert D. Reischauer.

Enclosure.

congressional budget office cost estimate

1. Bill number: H.R. 4999.

2. Bill title: Civil Rights Commission Amendments Act of 1994.

3. Bill status: As ordered reported by the House Committee on the Judiciary on September 29, 1994.

4. Bill purpose: H.R. 4999 would reauthorize the United States Commission on Civil Rights for the fiscal year 1995 and would authorize appropriations of $9.5 million for that fiscal year. In addition, the bill would make several minor changes to the current laws regarding the commission.

5. Estimated cost to the Federal Government:

-- (PLEASE REFER TO ORIGINAL SOURCE FOR TABLE) --

The costs of this bill fall within budget function 750.

Basis of estimate: The estimate assumes that the Congress will appropriate the full amount authorized, which would represent an increase of $0.5 million over the current 1995 appropriation of $9.0 million. The outlay estimate is based on the commissions historical spending rate.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimated comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mark Grabowicz.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 4999 will have no significant inflationary impact on prices and costs in the national economy.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES COMMISSION ON CIVIL RIGHTS ACT OF 1983

AN ACT To amend the Civil Rights Act of 1957 to extend the life of the Civil Rights Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States Commission on Civil Rights Act of 1983".

establishment of commission

Sec. 2. (a) There is established a Commission on Civil Rights (hereafter in this Act referred to as the "Commission").

(b)(1) The Commission shall be composed of eight members. Not more than four of the members shall at any one time be of the same political party. Members of the Commission shall be appointed as follows:

(A) four members of the Commission shall be appointed by the President;

(B) two members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party; and

(C) two members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the Majority Leader and the Minority Leader, and of the members appointed not more than one shall be appointed from the same political party.

(2) The term of office of each member of the Commission shall be six years; except that (A) members first taking office shall serve as designated by the President, subject to the provisions of paragraph (3), for terms of three years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed.

(3) The President shall designate terms of members first appointed under paragraph (2) so that two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of three years and two members appointed under clauses (B) and (C) of paragraph (1) and two members appointed under clause (A) of paragraph (1) are designated for terms of six years. No more than two persons of the same political party shall be designated for three year terms.

(c) The President shall designate a Chairperson and a Vice Chairperson from among the Commissions members with the concurrence of a majority of the Commissions members. The Vice Chairperson shall act in the place and stead of the Chairperson in the absence of the Chairperson.

(d) The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(e) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliation as the original appointment was made.

(f) Five members of the Commission shall constitute a quorum.rules of procedure of the commission hearings

Sec. 3. (a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairperson, or one designated by him to act as Chairperson at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commissions rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commissions rules at the time of service of the subpena.

(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

(d) The Chairperson or Acting Chairperson may punish breaches of order and decorum by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evidence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the persons reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commissions power to except from the answer such matter as it determines has been inserted scandalously, prejudiciously or unnecessarily.

(f) Except as provided in this section and section 6(f) of this Act, the Chairperson shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever

releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in executive session may for good cause be limited to inspection of the official transcript of his testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

(j) A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(l) The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organizations including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined; and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published.

(m) The provisions of subchapter II of chapter 5 of title 5 of the United States Code, relating to administrative procedure and freedom of information, shall, to the extent not inconsistent with this section, apply to the Commission established under this Act.

compensation of members of the commission

Sec. 4. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5 of the United States Code.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with subchapter I of chapter 57 of title 5 of the United States Code.

duties of the commission

Sec. 5. (a) The Commission shall

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age, handicap, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or the administration of justice;

(4) serve as national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice; and

(5) investigate allegations, made in writing and under oath or affirmation, that citizens of the United States are unlawfully being accorded or denied the right to vote, or to have their votes properly counted, in any election of the Presidential electors, Members of the United States Senate, or the House of Representatives, as a result of any patterns or practice of fraud or discrimination in the conduct of such election.

(b) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization.

(c) The Commission shall submit reports to the Congress and the President at such times as the Commission, the Congress or the President shall deem desirable.

(d) As used in this section, the term "handicap" means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6)).

(e) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.

(f) The Commission shall appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are members of eastern- and southern-European ethnic groups and shall report its findings to the Congress. Such reports shall include an analysis of the adverse consequences of affirmative action programs encouraged by the Federal Government upon the equal opportunity rights of these Americans.

The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.

powers of the commission

Sec. 6. (a)(1) There shall be a full-time staff director for the Commission who shall be appointed by the President with the concurrence of a majority of the Commission.

(2)(A) Effective November 29, 1983, or on the date of enactment of this Act, whichever occurs first, all employees (other than the staff director and the members of the Commission) of the Commission on Civil Rights are transferred to the Commission established by section 2(a) of this Act.

(B) Upon application of any individual (other than the staff director or a member of the Commission) who was an employee of the Commission on Civil Rights established by the Civil Rights Act of 1957 on September 30, 1983, the Commission shall appoint such individual to a position the duties and responsibilities of which and the rate of pay for which, are the same as the

duties, responsibilities and rate of pay of the position held by such employee on September 30, 1983.

(C)(i) Notwithstanding any other provision of law, employees transferred to the Commission under subparagraph (A) shall retain all rights and benefits to which they were entitled or for which they were eligible immediately prior to their transfer to the Commission.

(ii) Notwithstanding any other provision of law, the Commission shall be bound by those provisions of title 5, United States Code, to which the Commission on Civil Rights, established by the Civil Rights Act of 1957, was bound.

(3) Within the limitation of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in subsection (g) of section 3 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States as it deems advisable, but the Commission shall constitute at least one advisory committee within each State composed of citizens of that State. The Commission may consult with governors, attorneys general, and other representatives of State and local governments and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 203, 205, 207, 208, and 209 of title 18 of the United States Code.

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this resolution, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 3 (j) and (k) of this Act, over the signature of the Chairperson of the Commission or of such subcommittee, and may be served by any person designated by such Chairperson. The holding of hearings by the Commission, or the appointment of

a subcommittee to hold hearings pursuant to this subparagraph, must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of five members is present.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(h) Without limiting the application of any other provision of this Act, each member of the Commission shall have the power and authority to administer oaths or take statements of witnesses under affirmation.

(i)(1) The Commission shall have the power to make such rules and regulations as are necessary to carry out the purposes of this Act.

(2) To the extent not inconsistent with the provisions of this Act, the Commission established by section 2(a) of this Act shall be bound by all rules issued by the Civil Rights Commission established by the Civil Rights Act of 1957 which were in effect on September 30, 1983, until modified by the Commission in accordance with applicable law.

(3) The Commission shall make arrangements for the transfer of all files, records, and balances of appropriations of the Commission on Civil Rights as established by the Civil Rights Act of 1957 to the Commission established by this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, $7,159,000 for fiscal year 1992, and an additional $1,200,000 for fiscal year 1992 to relocate the headquarters office. There are authorized to be appropriated to carry out this Act $7,422,014 for fiscal year 1993, and an additional $850,000 for fiscal year 1993 to relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.

termination

Sec. 8. The provisions of this Act shall terminate on September 30, 1994.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Commission Act of 1983".

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) Generally. There is established the United States Commission on Civil Rights (hereinafter in this Act referred to as the "Commission").

(b) Membership. The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

(1) 4 members of the Commission shall be appointed by the President.

(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(c) Terms. The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

(d) Chairperson. (1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

(2) Thereafter the President may, with the concurrence of a majority of the Commissions members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

(3) The President shall, with the concurrence of a majority of the Commissions members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commissions members.

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

(e) Removal of Members. The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(f) Quorum. 5 members of the Commission constitute a quorum of the Commission.

SEC. 3. DUTIES OF THE COMMISSION.

(a) Generally. The Commission

(1) shall investigate allegations in writing under oath or affirmation relating to deprivations

(A) because of color, race, religion, sex, age, disability, or national origin; or

(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

(2) shall

(A) study and collect information relating to;

(B) make appraisals of the laws and policies of the Federal Government with respect to;

(C) serve as a national clearinghouse for information relating to; and

(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

(b) Limitations on Investigatory Duties. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any

fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

(c) Reports.

(1) Annual report. The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

(2) Other reports generally. The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

(d) Advisory Committees. The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

(e) Hearings and Ancillary Matters.

(1) Power to hold hearings. The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

(2) Power to issue subpoenas. The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Witness fees. A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) Depositions and interrogatories. The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

(f) Limitation Relating to Abortion. Nothing in this or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) Staff.

(1) Director. There shall be a full-time staff director for the Commission who shall

(A) serve as the administrative head of the Commission; and

(B) be appointed by the President with the concurrence of a majority of the Commission.

(2) Other personnel. Within the limitation of its appropriations, the Commission may

(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

(B) procure services, as authorized in section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(b) Compensation of Members.

(1) Generally. Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, United States Code, prorated on an daily basis for time spent in the work of the Commission.

(2) Persons otherwise in government service. Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such members usual place of residence, under subchapter I of chapter 57 of title 5, United States Code.

(c) Voluntary or Uncompensated Personnel. The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

(d) Rules.

(1) Generally. The Commission may make such rules as are necessary to carry out the purposes of this Act.

(2) Continuation of old rules. Except as inconsistent with this Act, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

(e) Cooperation. All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, to carry out this Act $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

SEC. 6. TERMINATION.

This Act shall terminate on September 30, 1995.

## iv. 140 Cong Rec H 11295: Civil Rights Commission Reauthorization Act of 1994

LEXSEE 140 Cong Rec H 11295

CONGRESSIONAL RECORD -- *House*

Friday, October 7, 1994

103rd Congress 2nd Session

*140 Cong Rec H 11295*

REFERENCE: Vol. 140 No. 145-Part II

TITLE: CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT OF 1994

SPEAKER: MR. BROOKS

TEXT: .

[*H11295]

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 2372) to reauthorize for 3 years the Commission on Civil Rights, and for other purposes, with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments, as follows:

Senate amendment to House Amendments: Page 10, line 12, strike out "September 30, 1995" and insert "September 30, 1996".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. FISH. Mr. Speaker, reserving the right to object, and I shall not object, but I make the reservation for the sole purpose of inquiring from the chairman of the full committee, am I not correct that the only change made by the Senate amendments to the House-passed bill is that we had a length of the authorization for 1 year that was changed and lengthened by the Senate amendment? That is the only change that was involved, is that correct?

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, the gentleman is absolutely correct.

Mr. FISH. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

## v. Legislative History of 103 P.L. 419

LEXSEE 103 CIS Legis. Hist. P.L. 419



*94 CIS PL 103419; 103 CIS Legis. Hist. P.L. 419*

LEGISLATIVE HISTORY OF: P.L. 103-419

TITLE: Civil Rights Commission Amendments Act of 1994

CIS-NO: 94-PL103-419

DOC-TYPE: Legislative History

DATE: Oct. 25, 1994

LENGTH: 5 p.

ENACTED-BILL: 103 S. 2372 Retrieve Bill Tracking report

STAT: 108 Stat. 4338

CONG-SESS: 103-2

ITEM-NO: 575

SUMMARY:
"To amend the United States Commission on Civil Rights Act of 1983."

Amends the U.S. Commission on Civil Rights Act of 1983 to authorize FY95 appropriations for Commission on Civil Rights programs.

Authorizes the Commission to prepare public service announcements and advertising campaigns to discourage discrimination.

CONTENT-NOTATION: Civil Rights Commission programs, FY95 authorization

BILLS: 103 H.R. 4999

DESCRIPTORS: CIVIL RIGHTS COMMISSION AMENDMENTS ACT; U.S. COMMISSION ON CIVIL RIGHTS ACT; COMMISSION ON CIVIL RIGHTS; CIVIL RIGHTS; ADVERTISING; GOVERNMENT INFORMATION AND INFORMATION SERVICES

REFERENCES:

DEBATE:

140 Congressional Record, 103rd Congress, 2nd Session - 1994
Sept. 30, Senate consideration and passage of S. 2372.
Oct. 3, House consideration of H.R. 4999, consideration and passage of S. 2372 with an amendment, and tabling of H.R. 4999.
Oct. 6, Senate concurrence in the House amendment to S. 2372 with an additional amendment.
Oct. 7, House concurrence in the Senate amendment to S. 2372.

REPORTS:

103rd Congress

H. Rpt. 103-775 on H.R. 4999, "Civil Rights Commission Amendments of 1994," Oct. 3, 1994.
CIS NO: 94-H523-28
LENGTH: 18 p.
SUDOC: Y1.1/8:103-775

HEARINGS:

103rd Congress

Hearings on the Civil Rights Commission reauthorization before the Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, Feb. 9, 1994. (Not available at time of publication.)

Hearings on the Civil Rights Commission authorization before the Subcommittee on the Constitution, Senate Judiciary Committee, June 16, 1994. (Not available at time of publication.)

## vi. Tracking Report of Legislation

*Bill Tracking Report S 2372*



Bill Tracking Report

103rd Congress
2nd Session

U. S. Senate

S 2372

103 Bill Tracking S. 2372; 1994 Bill Tracking S. 2372;

CIVIL RIGHTS COMMISSION AMENDMENTS ACTOF 1994

Retrieve full text version

**SPONSOR:** Senator Paul Simon D-IL

**DATE-INTRO:** August 9, 1994

**LAST-ACTION-DATE:** October 25, 1994

**STATUS:** Became public law (P.L. 103-419)

**TOTAL-COSPONSORS:** 0 Cosponsors: 0 Democrats / 0 Republicans

**SYNOPSIS:** A bill to reauthorize for three years the Commision on Civil Rights, and for other purposes.

**ACTIONS:**
Committee Referrals:
08/09/94 Senate Judiciary Committee

Legislative Chronology:

1st Session Activity:

2nd Session Activity:

08/09/94 140 Cong Rec S 11045
Referred to the Senate Judiciary Committee
08/09/94 140 Cong Rec S 11045
Remarks by Sen. Simon IL
08/11/94 140 Cong Rec D 984
Senate Judiciary Committee ordered favorably reported
09/28/94 140 Cong Rec S 13579
Reported in the Senate
09/30/94 140 Cong Rec S 13850
Passed in the Senate, after agreeing to an amendment proposed thereto, by voice vote
09/30/94 140 Cong Rec S 13850
Senate adopted Levin (for Simon) Amendment No. 2607, to strike the provision relating to investigatory and other duties, by voice vote
09/30/94 140 Cong Rec S 13896
Simon Amendment No. 2607, submitted
10/03/94 140 Cong Rec S 13927
House requested the concurrence of the Senate
10/03/94 140 Cong Rec H 10448
Senate requested the concurrence of the House
10/03/94 140 Cong Rec H 10462
Passed in the House, after being amended to contain the language of H.R. 4999, House companion measure, by voice vote
10/06/94 140 Cong Rec S 14407
Senate concurred in the amendment of the House to the bill, with an amendment proposed thereto, by voice vote
10/06/94 140 Cong Rec S 14407
Senate adopted Ford (for Simon) Amendment No. 2629, to extend the reauthorization period for an additional year, by voice vote
10/06/94 140 Cong Rec S 14558
Simon Amendment No. 2629, submitted
10/07/94 140 Cong Rec H 11295
House agreed to the Senate amendment to the House amendments to the bill, by voice vote --

clearing the measure for the President
10/25/94 140 Cong Rec D 1259
Signed by the President on October 25, 1994
(P.L. 103-419)

**BILL-DIGEST:**
(from the CONGRESSIONAL RESEARCH SERVICE)

Short title as introduced :

Civil Rights Commission Reauthorization Act of 1994

CRS Index Terms:

Civil rights
Administrative procedure
Authorization--Commission on Civil Rights
Budgets
Civil rights
Communications
Discrimination
Executive departments
Executive departments--Commission on Civil Rights
Executive reorganization
Law
Public service advertising
Subpoena
Witnesses--Fees

**CO-SPONSORS:**

## 5. Reauthorization Attempts

### i. In the 104th Congress

#### A. Text of H.R. 3874 - pdf

#### B. H.R. 3874 Bill Summary and Status

***Bill Summary & Status for the 104th Congress***

---

**Item 7 of 12**

**H.R.3874**
**Title:** To reauthorize the United States **Commission** on **Civil Rights**, and for other purposes.
**Sponsor:** Rep Canady, Charles T. [FL-12] (introduced 7/23/1996) **Cosponsors:** (none)
**Latest Major Action:** 9/26/1996 House preparation for floor. Status: Placed on the Union Calendar, Calendar No. 459.

**STATUS:** *(color indicates Senate actions)* (Floor Actions/Congressional Record Page References)

See also: Related House Committee Documents

**7/23/1996:**
Referred to the House Committee on the Judiciary.
**7/25/1996:**
Referred to the Subcommittee on the Constitution.
**7/25/1996:**
Subcommittee Consideration and Mark-up Session Held.
**7/25/1996:**
Forwarded by Subcommittee to Full Committee by the Yeas and Nays: 5 - 2.
**9/18/1996:**
Committee Consideration and Mark-up Session Held.
**9/18/1996:**
Ordered to be Reported by the Yeas and Nays: 12 - 6.
**9/26/1996 11:13am:**
Reported (Amended) by the Committee on Judiciary. H. Rept. 104-846.
**9/26/1996 11:13am:**
Placed on the Union Calendar, Calendar No. 459.

## C. 104 H. Rpt 846 – Report to Accompany H.R. 3874 - pdf

## D. Text of S. 1990

104th CONGRESS
2d Session
**S. 1990**

To reauthorize appropriations for the Civil Rights Commission Act of 1983, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**July 25, 1996**

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

**A BILL**

To reauthorize appropriations for the Civil Rights Commission Act of 1983, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the `Civil Rights Commission Reauthorization Act of 1996'.

## SEC. 2. BIPARTISANSHIP.

Section 2(b)(1) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975(b)(1)) is amended by inserting before the period the following: `, and of the members appointed not more than two shall be appointed from the same political party'.

## SEC. 3. APPROVAL OF SUBMISSION OF REPORTS.

Section 3(c) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(c)) is amended by adding at the end the following:

`(3) APPROVAL- The Commission may submit a report under this subsection only with the approval of a majority of the members of the Commission that are present at a meeting when a quorum is present.'.

## SEC. 4. APPROVAL OF ISSUANCE OF SUBPOENAS.

Section 3(e)(2) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a(e)(2)) is amended by inserting after the first sentence the following: `The Commission may issue a subpoena under this paragraph only with the approval of a majority of the members of the Commission that are present at a meeting when a quorum is present.'.

## SEC. 5. REVIEW OF STAFF DIRECTOR.

Section 4(a) of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975b(a)) is amended--

(1) by striking `There shall' and inserting the following:

`(A) IN GENERAL- There shall';

(2) by striking `(A)' and inserting the following:

`(i)';

(3) by striking `(B)' and inserting the following:

`(ii)'; and

(4) by adding at the end the following:
`(2) REVIEW AND RETENTION- The Commission shall annually review the performance of the staff director and conduct a vote with respect to retention of the staff director. The Commission shall be considered to have removed the staff director if less than a majority of the members of the Commission votes for retention of the staff director.
`(3) NONCAREER APPOINTEE- The staff director shall be considered to be a noncareer appointee, as defined in section 3132(a) of title 5, United States Code.'.

## SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

Section 5 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975c) is amended--
(1) in the first sentence, by striking `for fiscal year 1995' and inserting `for each of fiscal years 1997 and 1998'; and
(2) in the second sentence, by striking `fiscal year 1995' and inserting `fiscal year 1997 or 1998'.

## SEC. 7. TERMINATION.

Section 6 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975d) is amended by striking `1996' and inserting `1998'.

*END*

## E. S. 1990 Bill Summary and Status

***Bill Summary & Status for the 104th Congress***

---

**Item 11 of 12**

---

**PREVIOUS** | **NEXT**
**PREVIOUS:BILL STATUS** | **NEXT:BILL STATUS**
**NEW SEARCH** | **HOME** | **HELP** | **ABOUT STATUS**

---

**S.1990**
**Title:** A bill to reauthorize appropriations for the **Civil Rights Commission** Act of 1983, and for other purposes.
**Sponsor:** Sen Brown, Hank [CO] (introduced 7/25/1996) **Cosponsors:** (none)
**Latest Major Action:** 7/30/1996 Senate committee/subcommittee actions. Status: Subcommittee on Constitution, Federalism, Property. Approved for full committee consideration without amendment favorably.

---

**STATUS:** *(color indicates Senate actions)*

**7/25/1996:**
Read twice and referred to the Committee on Judiciary.
**7/30/1996:**
Subcommittee on Constitution, Federalism, Property. Approved for full committee consideration without amendment favorably.

## F. Text of S. 2187 – pdf

## G. S. 2187 Bill Summary and Status

***Bill Summary & Status for the 104th Congress***

---

**NEW SEARCH | HOME | HELP**

---

**S.2187**
**Title:** A bill to reauthorize appropriations for the Civil Rights Commission Act of 1983, and for other purposes.
**Sponsor:** Sen Brown, Hank [CO] (introduced 10/2/1996) **Cosponsors:** (none)
**Latest Major Action:** 10/2/1996 Referred to Senate committee. Status: Read twice and referred to the Committee on Judiciary.

---

Jump to: Titles, Status, Committees, Related Bill Details, Amendments, Cosponsors, Summary

---

**TITLE(S):** (*italics indicate a title for a portion of a bill*)

- SHORT TITLE(S) AS INTRODUCED:
  Civil Rights Commission Reauthorization Act of 1996
- OFFICIAL TITLE AS INTRODUCED:
  A bill to reauthorize appropriations for the Civil Rights Commission Act of 1983, and for other purposes.

---

**STATUS:** *(color indicates Senate actions)* (Floor Actions/Congressional Record Page References)
**10/2/1996:**
Read twice and referred to the Committee on Judiciary.
**10/2/1996:**
S.AMDT.5425 Referred to the Committee on Judiciary.
To amend the Age Disrimination in Employement Act of 1967 to clarify that institutions of higher education may offer age-based voluntary retirement incentive benefits for tenured faculty.

---

**COMMITTEE(S):**

| Committee/Subcommittee: | Activity: |
| --- | --- |
| Senate Judiciary | Referral |

**RELATED BILL DETAILS:**

***NONE***

**AMENDMENT(S):**

**1.** S.AMDT.5425 to S.2187 To amend the Age Disrimination in Employement Act of 1967 to clarify that institutions of higher education may offer age-based voluntary retirement incentive benefits for tenured faculty.
**Sponsor:** Sen Ashcroft, John [MO] (introduced 10/2/1996) **Cosponsors:** 1
**Committees:** Senate Judiciary
**Latest Major Action:** 10/2/1996 Senate amendment referred to committee. Status: Referred to the Committee on Judiciary.

**COSPONSOR(S):**

***NONE***

**SUMMARY AS OF:**
10/2/1996--Introduced.

Civil Rights Commission Reauthorization Act of 1996 - Amends the Civil Rights Commission Act of 1983 to require approval of a majority of the Commission before the Commission may submit a report or issue a subpoena. Prescribes a procedure for the withholding of the issuance of a subpoena.

Allows the Commission, by majority vote, to remove the staff director from office.

Provides for the application of the Freedom of Information Act, Privacy Act of 1974, and the Government in the Sunshine Act with regard to the Commission.

Authorizes appropriations.

Extends the Commission's termination date through FY 1997.

## ii. Reauthorization Attempts in 105th Congress

## A. Text of 105 H.R. 3117 – pdf

## B. H.R. 3117 Bill Summary and Status

***Bill Summary & Status for the 105th Congress***

---

**Item 1 of 1**

---

**PREVIOUS:BILL STATUS | NEXT:BILL STATUS**
**NEW SEARCH | HOME | HELP | ABOUT STATUS**

---

**H.R.3117**
**Title:** To reauthorize the United States Commission on Civil Rights, and for other purposes.
**Sponsor:** Rep Canady, Charles T. [FL-12] (introduced 1/28/1998) **Cosponsors:** 1
**Latest Major Action:** 5/15/1998 Referred to Senate subcommittee. Status: Referred to Subcommittee on Constitution, Federalism, Property. b

---

**STATUS:** *(color indicates Senate actions)* (Floor Actions/Congressional Record Page References)
**1/28/1998:**
Referred to the House Committee on the Judiciary.
**1/29/1998:**
Referred to the Subcommittee on the Constitution.
**2/4/1998:**
Subcommittee Consideration and Mark-up Session Held.
**2/4/1998:**
Forwarded by Subcommittee to Full Committee by Voice Vote.
**3/4/1998:**
Committee Consideration and Mark-up Session Held.
**3/4/1998:**
Ordered to be Reported (Amended) by Voice Vote.
**3/12/1998 5:05pm:**
Reported (Amended) by the Committee on Judiciary. H. Rept. 105-439.
**3/12/1998 5:06pm:**
Placed on the Union Calendar, Calendar No. 248.
**3/18/1998 10:53am:**
Mr. Canady moved to suspend the rules and pass the bill, as amended.
**3/18/1998 10:54am:**
Considered under suspension of the rules.
**3/18/1998 11:09am:**
On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.

**3/18/1998 11:09am:**

Motion to reconsider laid on the table Agreed to without objection.

**3/19/1998:**

Received in the Senate and read twice and referred to the Committee on Judiciary.

**5/15/1998:**

Referred to Subcommittee on Constitution, Federalism, Property.

### C.105 H. Rpt 439 – Report to Accompany H.R. 3117 – pdf

## C. Unauthorized Appropriation

**1. CBO Report: Unauthorized Appropriations and Expiring Authorizations – January 15, 1998 (pdf)**

**2. CBO Report: Unauthorized Appropriations and Expiring Authorizations – January 7, 2000 (pdf)**

**3. CBO Report: Unauthorized Appropriations and Expiring Authorizations – January 15, 2003 (pdf)**

## V. News Articles

## A. "Civil Rights Commission; Unwept to the Grave." *The Economist,* pg 29. August 2, 1986

61 of 108 DOCUMENTS


The Economist

August 2, 1986

**SECTION:** World politics and current affairs; AMERICAN SURVEY; Pg. 29 (U.S. Edition Pg. 23)

**LENGTH:** 923 words

**HEADLINE:** Civil rights commission;
Unwept to the grave

**DATELINE:** BOSTON

**BODY:**

The Civil Rights Commission has been condemned to death by defunding. If the sentence passed by the House of Representatives on July 17th is confirmed by the Senate, the 29-year-old agency will have to close up shop by the end of the year. The only hope for a reprieve would come from an administration decision to replace the commission's controversial chairman with a figure acceptable both to the civil rights community and to White House idealogues. But the president's men have found even a like-minded commission to be more an embarrassment than an asset, so it will probably be allowed to die.

It will be mourned only by a handful of civil rights organisations such as the Anti-Defamation League, which claims that the commission is being hounded merely because of its opposition to racial quotas. An overwhelming majority of the 185 member-groups of the Leadership Conference on Civil Rights voted in May to urge the dismantling of the commission and its replacement. The House of Representatives has proposed creating a new Office of Civil Rights Assessment, responsible to Congress rather than to the executive, along the lines of the Congressional Budget Office. Such a body, stripped of the commission's network of state committees, is expected to save $5m a year. But in its anxiety to get shot of the commission the House has allotted it a full year's budget of $12m for closing costs.

This is the second time the commission has been given the last rites. Congress nearly killed it three years ago on the ground that, through hiring and firing, Mr Reagan was turning an independent agency into an arm of the administration. Congress demanded and got the right to appoint half the commissioners. But under the chairmanship of an arch-conservative black, Mr Clarence Pendleton, the commission has criticised preferences for minorities, opposed pay equity for women and curtailed the monitoring of voting rights and desegregation that had been its mission for the previous 25 years.

Mr Pendleton further infuriated civil rights leaders by describing them as "charlatans" who were bringing in a "new racism". In April, a fellow commissioner and fellow conservative, Mr John Bunzel, accused the chairman of undermining the credibility of the commission with his "fulminations" and called on him to resign. Mr Bunzel, who has since been treated as a pariah by the White House, also referred to a "cloud" hanging over his colleague and the commission as a result of alleged financial improprieties.

California newspapers and the New Republic have examined in detail how Mr Pendleton extracted tens of thousands of dollars in fees and expenses from several non-profit agencies in California while, at the same time, he was collecting $67,000 in part-time pay from the commission. One of his California hats was a directorship in the San Diego bank which provided the now-attorney general, Mr Edwin Meese, when he was a presidential aide, with unsecured loans of more than $400,000. Mr Meese later nominated his old protege for the commission job. Mr Pendleton's activities in San Diego, which left several agencies including the local branch of the Urban League reeling in debt, are now under investigation.

Suspecting mismanagement at the commission, Congress ordered an audit. In March the General Accounting Office confirmed a pattern of cavalier book-keeping and politicised appointments. The GAO also noted that productivity at the commission had dropped from nine

reports in 1982 (plus 36 by state committees) to three in 1985 (plus two by state committees). Since 1983 the commission has stopped issuing analyses of federal civil rights enforcement. Some academics say that the quality and objectivity of research has risen as quantity has decreased. But several draft reports have been withdrawn under fire -- the latest, in April, a critical study of the programme of reserved contracts for minority businessmen. The administration has since confirmed that the programme will continue.

So will the use of goals and timetables for minority employment that Clarence Pendleton has derided as "psychological neo-slavery". At a Senate hearing on July 23rd, Mr Pendleton's opposition number at the Equal Employment Opportunity Commission told senators that he intends to act on a recent Supreme Court ruling authorising race-and sex-conscious remedies for discrimination. This was the first time an administration spokesman had conceded that the court's July decision requires an about-face in civil rights policy. The Justice Department under Mr Meese has yet to indicate how it will respond.

Even before the recent court decisions, the administration's attempt to substitute colour-blindness for racial and sexual goals had run up against resistance, not only from the civil rights lobby but from business and local governments which prefer to work within existing anti-discriminatory guidelines. The Reaganites' only successes have been a hobbling of enforcement by government agencies such as the EEOC, which quietly stopped pursuing minority hiring goals last winter, and of monitoring by the Civil Rights Commission.

The discrediting of Mr Pendleton and his commission has eclipsed legitimate arguments about whether a federal watchdog is still needed. The answer from Congress, prompted by the civil rights lobby, is almost certain to be yes, but not under the leadership of the colour-blind.

**GRAPHIC:** Picture, Pendleton between fulminations

## B. "Civil Rights, Reagan Style" *Newsweek*, pg. 18. January 30, 1984

86 of 108 DOCUMENTS


Newsweek

January 30, 1984, UNITED STATES EDITION

**SECTION:** NATIONAL AFFAIRS; Pg. 18

**LENGTH:** 1049 words

**HEADLINE:** Civil Rights, Reagan Style

**BYLINE:** MARK STARR with ANN McDANIEL in Washington

**BODY:**

Ronald Reagan's rebuilt U.S. Commission on Civil Rights met for the first time last week -- and immediately declared its independence from "all outside wishes or pressures, whether they come from the White House or any other group." But then the commissioners got on with their voting -- and found themselves parroting the Reagan administration's line on civil rights while hastily and systematically dismantling the policies of their more activist predecessors. "We are independent of the White House," chairman Clarence M. Pendleton Jr., a Reagan appointee, insisted -- although he conceded that "there is ideological compatibility."

Meeting in the affluent Baltimore suburb of Hunt Valley, the eight-member commission displayed a solid, five-vote majority for the Reagan line. The new majority denounced the practice of hiring and promoting minorities by quota, then agreed to reexamine the commission's longtime support for busing to achieve school desegregation. It authorized one study proceeding from the viewpoint that racial discrimination may no longer be at the root ofminority-group problems -- and a second to determine the adverse effects of affirmative action on white Americans of eastern and southern European descent. Finally, the commission rejected a study on the impact of Reagan's proposed 1985 budget cuts on minorities. "Is it discriminatory to cut a budget?" asked Pendleton. "I don't see where that's in our domain. That's not our concern."

Mandate: In essence, the Reagan commission has severely narrowed the definition of "civil rights." Since its inception in 1957, the commission's rather vague legal mandate has included: to "appraise the laws and policies of the federal government with respect to denials of equal protection of the laws under the Constitution." Over the years, minority groups have come to rely on the panel as an ally -- something of a national conscience promoting civil rights; Congress and state legislatures have used commission reports to justify civil-rights legislation. But now the Reagan majority apparently is arguing that its recent predecessors overstepped their mandate. The former commission's advocacy of racial quotas, for example, "merely constitutes another form of unjustified discrimination," the Reagan panel declared last week, adding that quotas "create a new class of victims, and when used in public employment offend the constitutional principle of equal protection of the law for all citizens." The commission specifically criticized the Detroit police department's exceedingly gradual affirmative-action plan -- under which blacks and whites are to be alternately promoted from sergeant to lieutenant until 50 percent of the department's lieutenants are black. Blacks make up 63 percent of Detroit's population.

Commissioners on the short end of last week's votes could do little but draw the line against the new interpretations. "Independence is as independence does, not as independence says," complained Carter appointee Mary Frances Berry. "The White House now has, for the first time in the history of this institution, its own Civil Rights Commission," she said, "and it's just in time for election year 1984." Faced with the loss of a valued government ally, civil-rights leaders also responded with outrage. Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, called Reagan's creation "a panel only [presidential counselor] Ed Meese could love. It does not reflect what civil-rights laws say. It reflects what Reagan's policies are." John Shattuck, legislative director for the American Civil Liberties Union, complained that"the president's use of raw executive power to pack the commission symbolizes an administration willing to bend the law at every opportunity to reverse a quarter of a century ofbipartisan progress."

The assault on Reagan administration policies moved from the rhetorical to the statistical when the National Urban League released its annual "State of Black America" report. The document

pegged black unemployment last month at 17.8 percent, more than twice the national average. And it revealed that the number of blacks below the official government poverty line ($9,862 for a family of four) last year climbed to 35.6 percent, nearly three times the poverty rate for whites and the highest figure since 1967. "The state of black America is disastrous," said Urban League president John E. Jacob. "The black poor have been relegated to an out-of-sight, out-of-mind status in American life." He endorsed the campaign to register blacks to vote in unprecedented numbers and denounced what he renamed the "U.S. Commission Against Civil Rights."

Harsh Exchanges: The new commission charged ahead with little regard for its critics. "The president got elected on a platform to do what we are doing now," argued Pendleton. "It is what the American people want." During some harsh exchanges with the commission's distraught voting minority, Pendleton seemed to revel in the majority's power, remarking that his opponents "forgot who won the fight" -- a reference to the president's contest with Congress over the commission's structure and mandate (NEWSWEEK, Nov. 7).

The Reagan appointees insist that they still support the concept of affirmative action for minorities and women, and they back programs providing for special recruiting and training -- as long as no quotas are set. "What we are doing," staff director Linda Chavez says, "is moving back to a position on which there is consensus in this country -- and that is a commitment to equal opportunity."

As long as the commission sticks to what Pendleton terms its new "neoconservative" stance, its critics among old-guard civil-rights activists will continue to bristle. Some critics of the new panel believe they have little option but to adopt a wait-and-see attitude. "We will give them a little more rope and see what happens," says Neas of the Leadership Conference on Civil Rights. But some activists and staff aides on Capitol Hill are already studying the feasibility of a congressional vote cutting off financing for the Reagan panel. In its place they would create a brand-new commission, sponsored by a Congress with a broader definition of an American's "civil rights."

**GRAPHIC:** Picture, Chavez and Pendleton in charge: Independent -- but compatible with the president, Steve Wilcoxson

## C. "Another Civil Rights Fight Brewing Over Memo" *The National Journal*; Vol 16, No. 2; Pg. 81

87 of 108 DOCUMENTS


The National Journal

January 14, 1984

**SECTION:** WASHINGTON UPDATE: Policy and Politics in Brief; Vol. 16, No. 2; Pg. 81

**LENGTH:** 752 words

**HEADLINE:** Another Civil Rights Fight Brewing over Memo

**BYLINE:** Rochelle L. Stanfield

**BODY:**

Civil rights has once more landed the Reagan Administration in the middle of a heated controversy. In preparation for the first meeting on Jan. 16 of the newly reconstituted Civil Rights Commission -- itself the result of a recent civil rights -- flap -- commission staff director Linda Chavez sent the members a memorandum proposing adoption of a new agenda in keeping with President Reagan's opposition to affirmative action and school busing as civil rights remedies. The Chavez memo immediately raised tempers within the commission and among civil rights lobbyists.

Chavez "goes far beyond the issues of busing and quotas to the role of government in enforcement of civil rights and whether the federal government has any responsibility to eliminate discrimination, using the remedies ordered by the Supreme Court," said Ralph G. Neas, executive director of the Leadership" Conference on Civil Rights. "This shows the heart and soul of the Reagan revolution in civil rights, which is the repackaging of discredited philosophies rejected by the courts and the Congres.s in the 1950s, 1960s and 1970s." *(See NJ, 12/17/83, p. 2622.)*

Reagan's efforts to reverse affirmative action programs have been consistently stymied by both Congress and the Supreme Court, and the latest incident appears to follow that pattern. No sooner had Chavez recommended that the commission support Administration opposition to a court-ordered affirmative action plan for the Detroit police department than the Supreme Court, on Jan. 9, unanimously refused to review that court order and thus left intact the Detroit plan.

The memo suggested studies that would investigate the link between "a general decline in academic standards" and the "advent of affirmative action in higher education." She urged as "one of our highest priorities" a study of the "adverse consequences of affirmative action programs on Americans of Eastern and Southern European descent." And she cautioned the commission to guard against expressing the notion that numerical underrepresentation implies discrimination.

Supreme Court ruhngs on school and job desegregation have allowed numerical underrepresentation as evidence of discrimination.

"I get the feeling that what she is advocating in her work is in direct conflict with the guarantees of the Constitution, as seen by the court," said Arthur S. Flemming, who was fired by Reagan as Civil Rights Commission chairman early in the Administration.

Chavez also recommended an investigation of the legal premises for mandating equal pay for work of equal value -- the so-called comparable worth doctrine. "The principle that underlies 'comparable worth' is a fundamentally radical one that would alter our existing marketplace economy," she wrote.

Commented Blandina Cardenas Ramirez, a commission member whom Reagan sought to oust: "The agenda she has laid out is not one, in my opinion, that proceeds from a data base that has been collected on the condition of women and minorities in this country. There is no empirical basis for what she wants to do -- protect whites from discrimination."

Chavez also suggested that the commission cancel several studies already under way, including assessments of the impact of federal education aid cuts on predominantly black and Hispanic colleges and on the employment of women and minorities in high-technology industries. "It seems to me she is advocating defining the problem away by being ignorant of it," said William L. Taylor, a member of the Washington civil rights establishment.

Whether the eight-member commission, five of whom generally support the President's views, will go along with Chavez's suggestions remains to be seen. "I hope this commission, like the old

one, will carefully analyze and deliberate the evidence beyond the skimpy information provided in this shabby memo," said Mary F. Berry, a commission holdover Reagan tried unsuccessfully to fire. Reagan appointee Morris B. Abram, a civil rights attorney, said of Chavez: "She is supporting equal opportunity for all Americans and vigorous enforcement of that law. That is the American dream."

Chairman Clarence M. Pendleton Jr. said Chavez "is simply giving air to the other side of the debate, and it's about time. Those up in arms tend to forget who won control of the commission." That's just the point, say the civil rights advocates. "The President has robbed the commission of much of its legitimacy and its reputation for independence," said Neas.

**GRAPHIC:** Picture, Chavez

## D. "In Winning His Battle for Rights Commission, Did Reagan Lost the War?" *The National Journal*, Vol. 15, No. 51-52; Pg. 2622.

88 of 108 DOCUMENTS


The National Journal

December 17, 1983

**SECTION:** LEGAL AFFAIRS; Vol. 15, No. 51-52; Pg. 2622

**LENGTH:** 4481 words

**HEADLINE:** In Winning His Battle for Rights Commission, Did Reagan Lose the War?

**BYLINE:** BY DAN FAGIN

**HIGHLIGHT:**
To the surprise of civil rights lobbyists, the President appears to have won control of the Civil Rights Commission. But how he did it may hurt him politically.

**BODY:**

The battle for possession of the Civil Rights Commission is finally over, and, after six months of byzantine maneuvering and elaborate negotiation, President Reagan appears to have won it hands down. But because of the way he won, he just may have lost the larger war.

Because the commission has been extremely critical of Reagan Administration policies, any change from the status quo could be termed a victory for the White House. But the price it has paid for a less hostile commission may outweigh the benefits.

For Reagan, it means a commission less likely to embarrass him during his expected reelection campaign. But his failure to reappoint two strongly feminist Republican women could add to his problems with women voters. Moreover, his handling of the commission issue could accentuate the accusations that he is insensitive to the civil rights cause.

Civil rights issues have never fit in neatly with conventional notions of Washington politics, and the dispute over the commission's fate was no exception. In the course of the struggle, the White House found itself fighting to place three prominent Democrats on the panel while Senate Democrats were battling to retain two Republicans; a House Member who was the driving force behind a bill reauthorizing the commission subsequently led the successful fight to eliminate the appropriation authorized by his own bill; former Dixiecrat Sen. Strom Thurmond, R-S.C., played a key role in resuscitating the commission; and Reagan, in signing the reauthorizing bill, took the opportunity to criticize the commission's work and to note that the Justice Department had expressed reservations about the bill's constitutionality. It was that kind of issue.

The effort to preserve the commission was accomplished under the gun. The panel's statutory life was scheduled to expire on Nov. 29, and it was not until Nov. 30 that Reagan signed a compromise bill creating a new commission whose eight members -- four appointed by the President and four by Congress -- could be removed from their six-year, staggered terms only for "malfeasance or neglect of duty." The old commission had six members, all nominated by the President, subject to Senate confirmation, with no fixed terms and no provision for removal.

It was Reagan's unprecedented attempts to remove, ultimately, five of the six commissioners appointed by previous Presidents that led to the uproar and eventually to the new statute.

Adoption of the bill was purportedly accompanied by a series of unwritten understandings between the White House and Senators involved in the negotiations on the identity of the new commission's members. But if, as an aide to a Republican Senator involved in the negotiations said, "the whole context of the dialogue was to try and reconstruct the type of commission we would have had had the President not fired the commissioners," than the oral agreements either did not exist or were not adhered to, because it is now apparent that a majority of the new commission's members will be far more sympathetic to Administration policies than their predecessors on the old panel were.

That unlikely outcome was the product of almost six months of exertion on the part of Congress, the Administration and civil rights organizations. The civil rights groups, organized under the Leadership Conference on Civil Rights, negotiated with congressional Democrats, congressional Democrats negotiated with congressional Republicans and congressional Republicans negotiated with the White House.

## REAGAN'S CHOICES

The subject of all this attention is a tiny agency with a budget this year of only $12.8 million. Created in 1957 as a vehicle to "put the facts on the table," in President Eisenhower's words, the commission was to be a bipartisan agency subject to periodic congressional reauthorization.

Congress instructed the commission to investigate complaints that citizens were being deprived of their right to vote, study and collect information on court decisions involving discrimination, monitor federal laws and policies on discrimination, serve as a national clearinghouse for information on civil rights and report its findings and recommendations to the President and Congress. The commission also supervises 50 state advisory commissions, which issue their own reports and recommendations.

According to William L. Taylor, who was commission staff director under President Johnson, "The mandate of the commission is the equal protection clause of the 14th Amendment, and that's a pretty broad mandate."

And there's the rub, as far as the Reagan Administration is concerned. "All seem to agree that the commission's best and most productive years were its earlier ones," Reagan said when he signed

the bill, referring to the 1960s, when the commission concentrated on voting rights, school desegregation and housing and job discrimination. Since that time, it has broadened its focus, issuing reports, for example, on the economic status of minorities and on the government's performance in guaranteeing equal opportunity. Recent reports have almost invariably been critical of the Administration.

In the first year of his presidency, Reagan's civil rights record was the target of almost continual commission criticism, and the panel's reports were often picked up by newspapers across the country. In early 1982, Reagan attempted to blunt some of the criticism by firing the commission's chairman, Arthur S. Flemming, and Stephen Horn, both Republicans, and naming Republicans Clarence M. Pendleton Jr. and Mary Louise Smith as chairman and vice chairman.

But this did not halt the commission's criticism. Smith often sided with the holdover commissioners to produce 5-1 votes critical of Administration policy. A few months later, the President sent three new nominations to the Senate to replace Democratic commissioners Mary Frances Berry, Blandina Cardenas Ramirez and Murray Saltzman. The nominations were approved by the Judiciary Committee over the objections of five dissenting Senators, who criticized the nominees' qualifications and stated their objection to "wholesale replacement of the commissioners." But the Senate leadership, caught up in the crush before adjournment and concerned about the possibility of a filibuster, did not act on the nominations.

Last May 26, Reagan asked that Linda Chavez be confirmed as staff director of the commission and sent the Senate three Democratic nominees who were much tougher to ignore. John H. Bunzel and Robert Destro are well-known civil rights lawyers (though Destro, one of the three nominees who failed to make it through the Senate the previous year, was criticized for his anti-abortion stands and for attacking the work of the commission in testimony before the Judiciary Committee four years before).

The stature of the third nominee, Morris B. Abram -- considered to be one of the nation's premier civil rights lawyers -- made it difficult to oppose him on grounds of inexperience or incompetence. All three nominees did, however, share the President's opposition to racial quotas -- and to busing for the purpose of school desegregation. (President Carter once offered Abram a position on the commission but withdrew the offer after Abram advised him that he did not support the use of racial quotas.)

The Administration had reportedly also considered removing the remaining holdover from the Carter Administration, Republican Jill S. Ruckelshaus, but declined to do so. Ruckelshaus's husband, William D. Ruckelshaus, had only the week before been named by Reagan as the new administrator of the Environmental Protection Agency.

The President's move to replace the three Democratic commissioners was greeted with outrage from civil rights groups and charges from congressional Democrats that Reagan was trying to pack the commission.

Throughout the debate, the Administration sought to characterize Democratic opposition to the nominees as support of busing and quotas, remedies considered to be unpopular with voters. But according to Berry, "The issue was never pro-busing and pro-quotas . . . There were at least 15 issues that got this commission in trouble with the Administration."

In an interview, she cited the commission's battle to obtain data from the Administration, in which the panel threatened to use its subpoena power to obtain records on Administration appointment and civil rights enforcement budgets. Reports criticizing the decline of enforcement budgets at several government agencies and the lack of minority appointments to high-level Administration positions were among the many that angered the Administration, Berry said. "They

wanted a Commission on Civil Rights which did not criticize the Administration as well as a commission that overrules the Supreme Court . . . They knew the public wouldn't stand for that, so they characterized it as a debate on quotas and busing."

But Sen. Orrin G. Hatch, R-Utah, contended that "the real issue is whether the commission will be able to freely examine all evidence and recommend the best policies or whether the commission will remain the captive of special interests that advocate quotas."

THE QUOTAS ISSUE

The debate over quotas is the most visible manifestation of a fundamental split on the proper role of government in guaranteeing equal opportunity. It is an issue that has separated a majority of the commission from the Administration and raised the stakes considerably in the fight for control of the panel.

Attorney General William French Smith has argued that quotas are a form of reverse discrimination, and William Bradford Reynolds, the head of the Justice Department's Civil Rights Division, has repeatedly expressed his opposition both to quotas and to school busing. As recently as Dec. 3, the Administration asked the Supreme Court to declare unconstitutional quotas that would benefit persons who are not themselves immediate victims of discrimination. The commission, however, has endorsed the use of quotas and busing.

"Almost nobody likes quotas," former commissioner Smith, who once served as chairman of the Republican National Committee, said in an interview from her home in Des Moines. "But they are a final tool of affirmative action; I just don't see how you can operate without them . . . They are rather key to civil rights policy."

Pendleton opposes the use of quotas and also wants to reduce the federal government's role in attempting to improve the economic status of the disadvantaged. "Nothing in my mind says you need a social program to carry out civil rights," he said. "There's a difference between discrimination and disadvantage. We can only provide opportunity, encourage people about education and training. And a lot of them will make it on their own. There's a liberal philosophy on civil rights and there's a conservative philosophy. If mine happens to match the President's philosophy, I'm wrong, but if theirs happeas to match the liberal philosophy, they're right. Liberals assume that civil rights is their agenda from cradle to grave. I don't happen to think that way."

But to Flemming, the man Pendleton replaced, the Administration is opposing an entire body of judicial opinion. "They challenge the right of a district judge to espouse an opinion based on the Constitution," he said. "When Mr. Pendleton and Mr. Reynolds and Mr. Smith and the President object, they're objecting to the fact that the court carries out its responsibilities, having found a violation of constitutional rights, to extend a vital remedy to its victims."

Rather then concentrate on the qualification of the nominees or on the issues that differentiated them from the incumbent commissioners, Democrats and civil rights groups, in their fight to prevent the President from appointing a majority of commissioners, emphasized the "independence" issue. They contended that the commission is, in Flemming's words, "a body that is very dependent on its independence if it's going to discharge its function. If it loses its independence, what good is it as a monitoring agency?"

Sen. Joseph R. Biden Jr., D-Del., though an opponent of both busing and racial quotas, picked up the independence theme during confirmation hearings for Abram, Bunzel and Destro. The nominees, he said, were "tainted," and he equated the President's maneuver with President Franklin D. Roosevelt's 1935 attempt to pack the Supreme Court. By focusing the debate on the integrity of the commission, Administration opponents hoped for, and eventually received, substantial

bipartisan support.

CUTTING A DEAL

The fact that the commission's authority would soon expire put additional pressure on the President to compromise. Democrats assumed that Reagan would not be eager to be blamed for the commission's demise, and so they refused to act on reauthorization legislation unless the President was willing to come to some kind of agreement on the commission's ideological composition.

At one point in the negotiations, it looked as if a settlement had been reached: the number of commissioners would be expanded to eight and no commissioner would be fired; that would mean that Reagan would get two of his three appointments. But presidential counselor Edwin Meese III, who negotiated for the White House, wanted Saltzman to resign so that the Administration could have all three of its nominees and thus appoint a majority of the commission members.

Senate Democrats and civil rights lobbyists refused to allow the President to choose a majority, and pressed for the initial agreement, which apparently had a majority of votes in the Judiciary Committee. The committee had scheduled a session on the bill for Oct. 25 and was expected to approve it. But that morning, Reagan shocked and enraged the Senators who had been hammering out the compromise by firing Berry, Ramirez and Saltzman.

Berry and Ramirez were reinstated after successfully suing the President, and Sens. Biden and Arlen Specter, R-Pa., promptly introduced a concurrent resolution -- not requiring the President's signature -- to create a Civil Rights Commission as part of the legislative branch. The measure quickly attracted 55 co-sponsors.

Then, on Nov. 9, Rep. Don Edwards, D-Calif., won House approval, 235-170, of his motion to delete funds for the commission from the conference report of the State, Justice and Commerce appropriations bill. "Our House vote in August was to retain an independent commission," said Edwards, who had sponsored the original measure to renew the commission's franchise. "The commission you will get will not be an independent commission, it will be a commission with five of the commissioners newly chosen by the President."

With Senate Democrats demanding a vote on the concurrent resolution and House Democrats setting the President up to be blamed for the commission's demise, the Senate GOP leadership moved to save the White House from a humiliating political defeat. All day on Nov. 10 and long into the next morning, Majority Leader Howard H. Baker Jr. of Tennessee and Sen. Robert Dole of Kansas negotiated long distance with Meese and other Administration representatives who had accompanied Reagan on his visit to Japan. Facing the prospect of passage of the concurrent resolution, the Administration was forced to agree to a compromise negotiated primarily by Dole.

At the time, the compromise, which Reagan eventually signed, seemed to be a far worse deal for the Administration than the offer Meese had rejected. But that was only if one considered as binding the purported oral agreements to reappoint several of the commissioners hostile to the Administration.

The compromise lasted just long enough for Congress to leave town and for the President to sign the bill. The oral agreements have proven to be worth as much as the paper they weren't printed on, and Administration spokesmen and some Republican legislators have questioned the constitutionality of some of the provisions of the new law.

The commission, under that law, does not fit neatly into either the executive or legislative branches because its members are appointed by both Congress and the President. In *Buckley v. Valeo,* a 1976 case involving the constitutionality of the responsibilities of the Federal Election Commission, an agency with a similarly mixed composition, the Supreme Court found that "insofar

as the powers confided in the commission are essentially of an investigative and informative nature, falling in the same general category as those powers which Congress might delegate to one of its own committees, there can be no question that the commission as presently constituted may exercise them."

Because the Civil Rights Commission limits its involvement to investigative and informative functions, defenders of the compromise argue that it is consistent with that decision and thus constitutional. The Justice Department seems to have grudgingly agreed. "The basic purpose of the old Commission on Civil Rights -- to investigate, study, appraise and report on discrimination -- would be maintained," the department said in its Nov. 30 statement, adding that the Civil Rights Commission may not exercise enforcement, regulatory or any other executive responsibilities.

But it also warned: "Agencies which are inconsistent with the tripartite system of government . . . should not be created. Equally unacceptable are proposals which impermissibly dilute the powers of the President to appoint and remove officers of the United States. The Civil Rights Commission is unique in form and function and should therefore not become a precedent for the creation of similar agencies in the future."

Sen. Hatch argues that the commission exercises executive functions such as operating as a clearinghouse, publishing regulations and "participating in for mulation of Administration policy with regard to civil rights." Nevertheless, Hatch voted for the proposal, pointing out that under *Buckley v. Valeo,* "the improper executive functions of this commission may be struck down without the Court declaring the commission itself unconstitutional. The extent to which this compromise retains executive functions . . . will have to be ultimately determined by the judicial branch."

BREAKING FAITH?

The disagreement over appointments to the commission is even more complex. According to Biden and other Democrats who helped negotiate the agreement, the White House agreed to reappoint Smith as well as Pendleton as its Republican choices and to pick two of its previous three Democratic nominees. Of the four congressional nominations -- one each by the House and Senate Majority Leaders and Minority Leaders -- the two Democrats were to be Berry and Ramirez, Ruckelshaus was to get one of the GOP slots and the other would go to a moderate Republican with a pro-civil rights record.

Because Smith and especially Ruckelshaus often voted against the Administration, it was assumed that a majority of commissioners would remain critical of Administration policy. Both Pendleton and Smith at the time predicted that there would be a 5-3 split in support of quotas and busing. But the scenario that unfolded was quite different.

When Reagan signed the bill on Nov. 30, he named Pendleton to the panel, and a week later he appointed Abram and Bunzel. But as his fourth appointment, he rejected Smith in favor of Esther Gonzalez-Arroyo Buckley, a high school teacher from Laredo, Texas.

Congressional Democrats immediately charged that the appointment was a direct violation of the agreements.

"I am shocked that after six months of negotiations, a specific commitment like this would have been violated," Biden said. Ralph G. Neas, the executive director of the Leadership Conference on Civil Rights and the prime negotiator for the civil rights groups, agreed and said that Dole had indicated to him that the White House had agreed to a list of appointees that included Smith.

Meese, however, said that he made it clear during the negotiations that he had made no commitment on who would be appointed. At a breakfast meeting with reporters on Dec. 8, he said:

"I don't think there was any misunderstanding. I think someone's not telling the truth." Dole has since said that there was no actual agreement, prompting Neas to say he was "perplexed and disappointed" by Dole's statement.

Minority leader Robert H. Michel, R-Ill., then further surprised the Democrats by naming Destro as his nominee instead of Ruckelshaus. It was assumed that Michel would choose Ruckelshaus, a Republican, because the bill requires that "of the members appointed [by the House], not more than one shall be appointed from the same party." But Berry, nominated by House Majority Leader Jim Wright, D-Texas, is a registered Independent, and so the Destro nomination was consistent with the law.

In the Senate, Baker nominated Francis S. Guess, commissioner of labor for Tennessee, and Minority Leader Robert C. Byrd, D-W. Va., named Ramirez.

The new commission will now have three blacks, Pendleton, Berry and Guess, and two Hispanics, Ramirez and Buckley.

With the appointment of Destro, the Administration had now handpicked a commission majority -- the very development Democrats and civil rights groups had fought all along to prevent.

A majority not only determines the content of the commission's reports but also chooses the chairman and staff director. Under the new law, the President may designate both, but only "with the concurrence of a majority of the commission's members." In naming Pendleton to the commission, Reagan asked that he be again named chairman and that Chavez remain as staff director. When both Smith and Ruckelshaus, according to Neas and several congressional sources, refused to tell the White House that they would support Pendleton for the chairmanship, their reappointments became in doubt. "In all the previous months of negotiation," Neas said, "the fact that Smith and Ruckelshaus would be reappointed had never been questioned."

The chairmanship is a largely symbolic office, but the staff director has more substantive responsibilities, and making this appointment subject to commission approval was the main issue that kept negotiators on the line to Japan almost all night in November.

Chavez, a former congressional staff member and assistant to the president of the American Federation of Teachers, AFL-CIO, has had a controversial tenure as staff director. Before she assumed office six months ago, Pendleton signed a letter from all of the commissioners asking that the President withdraw her nomination because of her lack of administrative experience, and she has since been criticized for her editing of commission reports -- for example, substituting the term "forced busing" for other terms such as "busing to achieve racial integration." In an interview, Chavez said she made the change because "it was a more succinct way to put it."

Since the compromise was reached, Chavez has resumed work at the commission, despite the fact that five commissioners, the number neccessary to constitute a quorum, had not at the time been named. "As soon as there are enough commissioners, a vote will take place," she said. "Until that time, the President has appointed me and I intend to serve."

Chavez said that "there will certainly now be a new viewpoint to the commission." In the past, she said, "I've written memos and have outlined my own points of view on issues, and the commission has chosen to ignore those recommendations."

## DAMAGE ASSESSMENT

To members of the Reagan Administration and to other observers, the Civil Rights Commission's criticism of the President, which they considered unbalanced and unfair, necessitated a change in the makeup of the commission. "There was a need for a little less tunnel vision on that commission," a Republican congressional staff member said.

Meese contended that "people very politically oriented were using the commission as a platform to criticize the President." The fact that Reagan was successful in changing the tenor of the commission, he added, makes the issue a net plus for the President.

But the political damage wrought by the Administration's handling of the issue, and especially the failure to reappoint Smith and Ruckelshaus, may be a heavy price to pay for a more amiable commission.

"The fact that the President would spend months of his time trying to destroy a commission that probably 90 per cent of the American people had never heard of gives voters an idea of the ideological rigidity of this Administration," said Mary Jean Collins, vice president of the National Organization for Women (NOW). Kathy Wilson, president of the National Women's Political Caucus, predicted that "the effect of this Administration's incredible insensitivity . . . could add up to defeat in '84." The President's handling of the commission, she said, "ensures that people will remain vengeful."

Neas said that civil rights groups and "our friends in Congress" are already planning their next move. Among the responses they are contemplating is the formation of some sort of "shadow commission" to serve as an alternate source of information on the the Administration's civil rights record. (Flemming currently heads a similar type of organization, comprising more than 16 former high government officials, called the Citizens Commission on Civil Rights.)

At a subsequent news conference, Neas warned: "Mr. President, let there be no doubt that while you have removed some of the commission's conscience. . . those who are committed to civil rights are now more determined than ever to explain the unfairness of your civil rights policies."

But Linden Kettlewell, political director of the Republican National Committee, said she thinks the political fallout will be minimal. "The specific composition of the commission is less important than the fact that there is a representative group of people," she said. "I'm confident that the new commission is representative." She also pointed out that Reagan chose a Hispanic woman instead of Smith.

Collins of NOW, however, said that by rejecting Ruckelshaus and Smith, the Administration has "reached out to alienate a new group of people," the "moderate suburban women." "It's one thing to alienate blacks" she said, "but it's another to chop off an entire chunk of the Republican Party. . . It's becoming a central position of the Republican Party to be anti-women."

Smith herself said she "feared that the party was suffering from a serious perception problem with women. . . I just wish the President were getting some better advice."

"The President wanted to recreate the Civil Rights Commission in his own image," Kathy Wilson said, "and I can only say, 'God help us.'"

**GRAPHIC:** Picture 1, The Ins at the Civil Rights Commission, Mary Frances Berry, Richard A. Bloom; Picture 2, Clarence M. Pendleton Jr.; Picture 3, The Ins at the Civil Rights Commission And the Outs, Jill S. Ruckelshaus; Picture 4, Mary Louis Smith; Pictures 5 through 7, Democratic Sen. Joseph R. Biden Jr. and Republican Sen. Arlen Specter introduced a concurrent resolution that would create the Civil Rights Commission as a part of the legislative branch. Facing the prospect of passage of the concurrent resolution, the Reagan Administraton was forced to agree to a compromise negotiated primarily by GOP Sen. Robert Dole. Biden and others who took part inthe negotiations say the White House reneged on the agreement; Dole says that's not the case., Richard A. Bloom; Picture 8, Sen. Orrin G. Hatch: "The real issue is whether the commission will be able to freely examine all evidence and recommend the best policies or whether the commission will remain the captive ofspecial interests that advocate quotas.", Richard A. Bloom; Picture 9, Arthur S.

Flemming, who was fired as chairman of the Civil Rights Commission in 1982, saysthe commission is "a body that is very dependent on its independence if it's going to discharge its function. If it loses its independence, what good is it as a monitoring agency?", Richard A. Bloom

## E. "Administration Says It Merely Seeks A 'Better Way' To Enforce Civil Rights." *The National Journal.* Vol, 14, No. 13; Pg. 536

101 of 108 DOCUMENTS


The National Journal

March 27, 1982

**SECTION:** JUSTICE; Vol. 14, No. 13; Pg. 536

**LENGTH:** 4962 words

**HEADLINE:** Administration Says It Merely Seeks A 'Better Way' to Enforce Civil Rights

**BYLINE:** BY MICHAEL WINES

**HIGHLIGHT:**
Recent Administration actions show that the government is narrowing the scope of its anti-discrimination efforts, and civil rights is a maajor political issue again

**BODY:**
The bureaucracy that enforces the nation's civil rights laws is a complex and unwieldy piece of machinery even by federal standards.

Its cogs and gears clank through every Cabinet department and dozens of regional offices. Maintaining them requires thousands of employees and millions of dollars. Even then, the gears grind exceedingly slowly. Settling even petty disputes can take years.

Moreover, it's noisy. Conservatives and big business gripe constantly about the racket. Liberals complain that it is not loud enough.

So it should be no surprise that the Reagan Administration, with its visceral dislike of noisy, clumsy bureaucracies, has been busy recently oiling gears and loosening bolts in an array of civil rights agencies.

The tinkering ranges from minor regulatory changes, such as a March 16 move to exempt some 300 small colleges from laws barring sex and race discrimination, to major overhauls, such as President Reagan's efforts to oppose strengthening key provisions of the 1965 Voting Rights Act.

All these changes, Administration officials repeatedly state, attempt to reform a bureaucracy whose overly rigid enforcement of discrimination laws has "divided" American society instead of making it more harmonious.

"There's a growing awareness that the agencies that enforce civil rights laws have been overly intrusive," William Bradford Reynolds, assistant attorney general for civil rights, said in a recent interview. "It doesn't do much good to continue to go down the same blind alleys."

After 14 months of tinkering, however, an increasing number of critics are questioning whether the Administration wants to reform the civil rights machinery or dismantle it gear by gear. The resulting outcry has blown civil rights into a major domestic issue--and a political embarrassment--for the first time in more than a decade.

The Justice Department's Civil Rights Division, the key federal agency for enforcement of anti-discrimination laws, is experiencing a barely concealed revolt by many of its 390 employees. The civil rights lobby, moribund since the early 1970s, has sprung to life with a series of bitter attacks on Administration policy.

The White House has committed a long string of political gaffes on civil rights issues that have raised serious doubts about its commitment to equality. The latest of those blunders--Reagan's ill-fated attempt to grant tax exemptions to schools that practice racial discrimination--sent even Republican supporters scurrying to disassociate themselves from the President's action.

"A lot of things have been mishandled," said an Administration official who, like many others, asked not to be named. "If you were a Democratic strategist trying to put a 'mole' in the White House to screw things up, you couldn't have done a much better job."

Everyone agrees the Administration could better organize and explain its civil rights initiatives. Many key decisions, such as the abortive tax-exemption effort and some controversial appointments to civil rights agencies, have been made without the advice of congressional Republicans, minority group leaders and even some top White House staff members.

Reagan's action on the Voting Rights Act is cited as a prime example of political insensitivity. The Administration sat virtually idle last summer while a beefedup renewal of the law sped through the House, 389-24. Only then, after both House and Senate Republicans had lined up behind the bill, did Reagan start pressing to revise a critical section of it.

That section would outlaw any practice that "results" in a denial of voting rights on account of race or color. Reagan wants to require the government to prove an "intent" to deny voting rights, a much tougher standard of proof. The semantic change has outraged civil rights groups and has set the stage for a major battle in the Senate, where the bill now is in the Judiciary Committee.

Administration officials hope to smooth the path of future civil rights decisions by funneling them through the newly created Cabinet council on legal policy. "No one enjoys the present condition--not us, not the people on the outside," an official said.

But lack of political savvy explains only part of the bitter debate over the Administration's conduct on sensitive civil rights issues. For taken together, the Administration's actions--however well intentioned--can only be read as paring back both the scope and the pace of antidiscrimination efforts:

* Justice Department sources say the pursuit of civil rights violations has slowed dramatically in several areas. Prosecution of school and housing discrimination cases, as well as of civil rights violations in prisons and mental hospitals, has been particularly hard hit.

* Action by some agencies against civil rights violators that receive federal money has come almost to a standstill. The Education, Labor and Health and Human Services Departments are said to be especially laggard in enforcing the law; Judge John H. Pratt of the U.S. District Court for the District of Columbia threatened on March 16 to hold Education and Labor Department officials in contempt of court for failing to follow court-ordered schedules in civil rights investigations.

* Regulatory changes that are being debated by Administration officials could limit the

application of many laws intended to bar discrimination against minorities, women and the handicapped.

* Reagan appointees to key civil rights jobs--some of whom have dropped out in the face of widespread protests--share a common philosophy that federal involvement in civil rights issues has become burdensome and often counterproductive.

Perhaps the harshest attacks on these developments came on Feb. 15 from the Leadership Conference on Civil Rights, a coalition headed by Benjamin L. Hooks, the executive director of the NAACP In a 75-page report, the conference branded the Justice Department "the locus of anti-civil rights activity in the federal government" and charged that it has subverted federal rights laws under pressure from conservative politicians.

William Robinson, an attorney with the Washington-based Lawyers' Committee for Civil Rights Under Law, said Reagan's policies could dash the hopes of blacks and other minorities to win equality, with potentially disastrous results.

"This country is fairly unique in that social change doesn't have to come about through violence," he said. "You take away that belief, and things can become much rougher. One of my big questions about this Administration is whether it has any concept of ordered social change."

'NO LESS VIGOROUS'

The reaction of top Reagan Administration officials to those charges ranges from mild chagrin to outright denial.

"We've made some mistakes, obviously. I think what we're confronting now is the collective weight of a lot of little things--some our fault, some not," said Michael M. Uhlmann, an assistant director of the White House Office of Policy Development.

"But if the law were as clear on these issues as some civil rights advocates say it is, then they wouldn't be litigated. Some of these issues are debatable. And to debate them doesn't mean you're trying to roll back civil rights."

"Despite what you read, we have not stopped civil rights enforcement in its tracks," said Reynolds. "In fact, enforcement . . . has been no less vigorous than in the prior Administration.

"What we have done is focus on areas where we suggest a change is necessary. We've looked very hard at certain remedies [for rights violations]. We've read the studies as to how effective those remedies have been, and we've concluded that there are better ways."

In the view of Administration officials, the current debate over civil rights is not over the goal of eliminating discrimination but over the ways to reach it. "There are better ways of doing it than to bang people over the head in the courts," said deputy attorney general Edward C. Schmults.

That "better way" philosophy may be the closest thing to a formal Administration policy on civil rights. It is rooted in several strongly held beliefs--most of which are rejected by traditional civil rights advocates.

One is that the nation's centuries-old problem of discrimination against blacks and other minorities has largely been solved.

"A consensus developed after *Brown v. Boord of Education* [the landmark 1954 school desegregation case], both in Congress and in the country as a whole, that racial discrimination is wrong and should not be tolerated in any form," Reynolds told the Delaware Bar Association in a Feb. 22 speech. "Most Americans, I think, now support the idea that each individual should bejudged on his or her merits, regardless of race."

Consequently, officials say, heavy-handed enforcement of laws against discrimination often is now unneeded. Some court-ordered remedies for segregation, such as busing and affirmative action

hiring quotas, have fostered racial resentment among whites without significantly improving the lives of minorities, they contend.

Another belief at the core of the Administration's philosophy is that the federal civil rights bureaucracy simply has become too complex and burdensome and too accustomed to setting broad social policies by regulatory fiat. Reynolds contends that universities receiving federal money are "engulfed" by civil rights investigators who pore through records and harass administrators "on the strength of very little or no basis to conclude that they have discriminated."

When discrimination is found, say Administration officials, violators are often forced to spend huge amounts of money to correct minor problems. A favorite example is the roster of recent laws that bar discrimination against the handicapped.

"No one is against aiding the handicapped," said Uhlmann. "But having said that, what does it mean? You can run the gamut from installing ramps to buying wheelchairs to supplying interpreters for deaf students."

Civil rights advocates agree that discrimination has lessened in recent years and that some federal enforcement agencies have overstepped their bounds. But they are still sharply at odds with current Administration policy.

"What we see is a conservative Administration being activist in the opposite direction," said a Civil Rights Division lawyer who asked not to be named. "It's this blind ideology--an airtight, rightist view of the world. They're reactionary. It's that simple."

Reactionary or not, the broad outlines of the Administration's civil rights actions hew closely to suggestions made by the Heritage Foundation, a conservative think tank, in its widely circulated 1980 report, *Mandate for Leadership.* That report argues for a "color-blind and gender-blind" approach to civil rights policy and labels the Civil Rights Division a "radicalized" agency.

The report also sharply attacks the actions of many civil rights offices in federal departments, where the vast majority of discrimination complaints involving recipients of federal money are first investigated.

The foundation's report warns that the civil rights lobby is "well organized and will be directly affected by any changes." In particular, it notes, the head of the Civil Rights Division must be willing "to take the heat" for policy changes and to face staff rebellions.

## POLITICAL COSTS

The advice seems prophetic. Most observers agree that the shifts in civil rights policy have been guided as much by ideology as by pragmatism. And the political cost has been steep.

Reynolds and Attorney General William French Smith have sharply restricted the division's authority to prosecute cases that had been routinely pursued in previous Administrations of both political parties.

The restrictions are intended to limit civil rights lawsuits to cases in which the victims of discrimination are limited and easily identified--such as particular women denied jobs at a factory because of their sex--and in which the violation may be easily corrected.

Reynolds, for instance, has said the division no longer will seek the desegregation of entire school systems guilty of racial bias but instead will limit its suits to schools where victims of bias can be singled out. Similarly, he opposes the filing of job discrimination suits that seek relief, such as back pay or hiring quotas, for large classes of discrimination victims.

Civil rights advocates regard such suits as the linchpins of a gradual expansion of civil rights laws during the 1970s. Reynolds says such suits are legally questionable, socially counterproductive and contrary to the Administration's view that the Constitution should be "color-blind."

One effect of the new restrictions is a drop in the division's legal activity, and not just in racially related cases.

The division's special litigation section, for example, is charged with protecting the rights of prison inmates, mental patients, the physically handicapped and persons who suffer discrimination in public accommodations. In 1980, the section filed 29 suits; in 1981, no suits were filed.

The division's general litigation section primarily enforces school desegregation laws. In 1980, it filed 22 suits; in 1981, the number dropped to 10.

The section also enforces housing discrimination laws. No housing bias suits were filed in 1981 and only one has been filed so far this year.

Reynolds contends that numbers alone cannot measure his division's effectiveness. "Rather than file a case in court, given the courts' schedules, our view is to try to work things out voluntarily first," Reynolds said.

A division investigation recently resulted in the closing of a state mental institution without going to court, Reynolds noted. And the division settled major school desegregation cases in Chicago and St. Louis with consent decrees.

Justice employees agree that numbers alone do not tell the entire story. But they contend the rest of the enforcement picture is more lax, not more aggressive, than court filings indicate. In interviews, they generally depict the agency as slow to initiate lawsuits and willing to settle existing ones at minimal cost to defendants. Said one, "It's the lawyers who are trying to enforce the statutes against [Reynolds], who is trying to keep these lawyers, these raving liberals, down."

JUDGMENT CALLS

One case that illustrates the department's philosophy involves Central Prison, a maximum-security facility in Raleigh, N.C. According to a Justice lawyer, it is "perhaps the last prison in the United States that is totally and flatly segregated by race." State officials admit the prison is segregated as well as illegally overcrowded, but have promised to end those violations when a new prison opens.

Several sources say state officials have been making that promise for years and that the deadline for completing the prison has slipped repeatedly.

Division lawyers have pressed several times for a lawsuit against the state, primarily to force state officials to negotiate a consent decree that would set a date for correcting the violations. But Reynolds has refused to approve that first step, and the Justice Department currently has no guarantee that the segregation will end even when a new prison is finally opened.

"One has to make judgment calls," Reynolds said. "Do you go into court and get a consent decree that comes down about the same time as a new prison opens? Or do you get some results without spending all that time thrashing around with litigation?"

Replied a lawyer in Reynolds's division: "This is a state that has segregated its prisons in violation of a law that was passed in 1964. This is 1982. This is exactly the sort of clear-cut case that the Administration has pledged to pursue. Why aren't we pursuing it?"

One possible reason, contends Robert Plotkin, is political clout. Plotkin headed the special litigation section, which is handling the prison case, until he resigned last August.

"The staff went down to talk to the state about it," Plotkin recalled, "and they got an extremely hostile response. They reminded us several times that they knew [Sen. Jesse A.] Helms [R-N.C.]. And they made it very clear that they weren't worried about the Justice Department."

"I've never talked to Jesse about that case since I came here," Reynolds said.

Even critics admit there are exceptions to what they regard as a lag in civil rights enforcement.

The division has stepped up prosecution of criminal civil rights violations, such as police brutality. The special litigation section is investigating 16 reported violations involving institutionalized persons, although no lawsuits have yet been authorized.

And some lawsuits left over from previous Administrations have been vigorously prosecuted. Division lawyers recently won a landmark housing discrimination case involving exclusionary zoning practices in Parma, Ohio, a Cleveland suburb.

None of this has buoyed the rapidly sinking morale of a group of Civil Rights Division employees who have presented Reynolds with two mass letters of protest since he joined Justice last August.

Many of them see the division's narrowing of civil rights enforcement as a desertion of the Justice Department's historic role: to enforce the law regardless of whether it fits the philosophy of the government in power.

And they are particularly disturbed by their boss's public rejections of what many legal experts--and all civil rights advocates--regard as legal precedents on such matters as busing, affirmative action and tax exemptions.

Last year, Reynolds labeled as "wrongly decided" a 1979 Supreme Court decision upholding the right of private employers to establish voluntary affirmative action programs. The case, *United Steelworkers of America v. Weber,* has been a key element in Labor Department efforts to devise equal employment guidelines for federal contractors.

It is not unusual for Justice lawyers to oppose a Supreme Court ruling. The department did exactly that in supporting the plaintiffs in the historic *Brown v. Board of Education* case, in which the Court overruled an 1896 decision.

But it is highly unusual, legal experts say, for a Justice official to attack a precedent-setting case that is only two years old. And it is highly unusual for the department to abandon its position in the middle of litigation, as it has done in several recent civil rights cases.

In one instance, the department switched sides in a Supreme Court case contesting the right of Washington state voters to ban by referendum a voluntary school busing program in Seattle. During the Carter Administration, Justice attorneys had successfully argued that the busing ban was racially motivated and violated the I4th Amendment. After Reagan took office, Justice reversed its position, supporting the ban.

In a second instance, the department last December withdrew from a Supreme Court case involving Texas's obligation to provide free schooling for the children of illegal aliens. Before dropping the case, Justice lawyers had argued that the 14th Amendment mandated free schooling.

A third switch came on Jan. 8, when the department attempted to withdraw from its Supreme Court case to deny taxexempt status to Bob Jones University, a racially segregated institution. The Administration contended that the government's policy had been wrong.

The tax-exemption switch, which was engineered by top Justice officials without consulting staff attorneys, "was the last straw for a lot of us," a Justice lawyer said. The turnabout prompted a letter in which more than 200 lawyers in the Civil Rights Division expressed "serious concerns" about Reagan's decision.

"I'm sure they [top Justice officials] are sincere in what they're trying to do," said another Justice lawyer. "The difference comes when you're dealing with philosophy, and not facts. This change of approach is the result of a dogma--a religion that influences the approach you take to the law."

THE SCHOOL FRONT

By no means is that change in approach confined to the Justice Department. Several other

federal agencies have curbed enforcement of civil rights regulations that govern recipients of federal grants and loans. Still others have moved oward changing the regulations themselves to limit the civil rights obligations of grant recipients.

At the Health and Human Services Department, staff members say some 30 violations by recipients of federal funds are ready to be referred to the Justice Department for prosecution, but have been placed on hold by top HHS officers. "Justice looks left-wing compared to us," a department lawyer said. "At least they're taking some cases."

The Education Department is a more critical example. One indicator is the department's record in investigating complaints of civil rights violations. A 1977 consent decree, filed with the U.S. District Court for the District of Columbia, requires the department to meet strict timetables for wrapping up its probes and issuing findings.

The department has always been laggard. In August 1979, for instance, it met the timetable only about two-thirds of the time.

"But subsequent court filings show things haven't improved," said Elliot Lichtman, the attorney who won the 1977 consent decree on behalf of black schoolchildren. "In fact, they've gotten worse."

Those filings show that the annual number of investigations completed per Education employee has dropped from 10.4 in February 1981 to 4.4 last January. Moreover, Education Secretary Terrel H. Bell failed to release any findings on investigations for a 117-day period in early 1981, although 86 completed probes had been sent to him by department employees.

"They're just negotiating with the offenders," a department employee said. "Nothing is going on."

Department officials also are busy narrowing the scope of the agency's civil rights regulations. Federal law bars any government-financed "program or activity" from discriminating, and that language has always been read to encompass entire schools or districts, regardless of where their federal grants are spent.

But on March 16, the department excluded from civil rights laws some 300 colleges and technical schools whose only source of federal money is student loans. The rationale is that the students receive the loans first, even though the federal money eventually winds up in school coffers.

The department's ambitions for change, however, extend far beyond loans. Top officials want to redefine "programs and activities" to limit civil rights coverage to the specific activities receiving federal aid, such as a college's chemistry department, according to knowledgeable officials in the department.

Sources say that argument has been resisted by Justice officials led by Robert D'Agostino--a Reynolds aide who, ironically, was widely criticized last fall after writing a memo that characterized black schoolchildren as disruptive.

But the debate continues. The argument for exempting student loans from rights laws twice went to presidential counselor Edwin Meese III before being accepted. Education officials are expected to press just as hard to narrow the meaning of "programs and activities."

## THE REGULATORY APPROACH

Indeed, regulatory changes may emerge as the major vehicle for narrowing the scope of civil rights laws in future months.

Reagan's New Federalism, with its massive shifts in the forms of federal aid, especially worries some rights advocates. Since most civil rights laws are enforceable only by shutting off the federal money spigot, any narrowing of the rules tied to that aid could decisively affect future civil rights

enforcement.

The Office of Management and Budget (OMB) has proposed just such a narrowing, so far unsuccessfully. In a Sept. 28 memo, OMB special counsel Michael Horowitz suggested that all federal block grants established by last summer's budget reconciliation act be exempted from rules that bar discrimination against the aged, the handicapped, minorities and women. Justice officials rejected Horowitz's argument in a widely circulated internal memo on Jan. 3.

Meanwhile, however, individual civil rights regulations are being reviewed by a variety of federal agencies.

The Justice Department is currently working with Cabinet departments and the Presidential Task Force on Regulatory Relief on major revisions to regulations that bar discrimination against the handicapped.

A source close to the revisions predicts "some loosening" of current rules. But OMB officials, who must pass on the rules, are battling for drastic changes.

OMB's proposals would place a strict cap on the amount of money governments would be required to spend to give the handicapped equal access to public facilities such as schools. A deaf student's request for an interpreter, for example, would be subject to a cost-benefit analysis balancing the cost against the student's future worth to society.

The Labor Department's Office of Federal Contract Compliance Programs, which monitors employment practices of federal contractors, has also proposed substantial cuts in existing rules. The Labor proposals are seen as especially significant because they will regulate thousands of firms with billions of dollars in federal contracts.

Current regulations require that all contractors with 50 or more employees and contracts worth $50,000 or more file affirmative action plans to increase minority representation in their work forces. The Reagan proposal, now under revision, tentatively would raise those triggers to 250 employees and $1 million in contracts. That would cover only the 4,000 largest of the 17,000 companies that do business with the government.

C. Boyden Gray, counsel to the regulatory relief task force, stressed that all contractors would still be required to file breakdowns of their labor forces with the Equal Employment Opportunity Commission and be subject to investigation if evidence emerges that those firms discriminate.

But Barry Goldstein, an attorney with the NAACP Legal Defense and Education Fund Inc., calls the proposed revisions a significant watering down of current policy. The new rules, he says, might merely require employers to set recruitment goals that may not be met.

Across the range of federal civil rights activities, the only agencies that have steered relatively free of the new restrictions are the two with the weakest powers--the Equal Employment Opportunity Commission (EEOC) and the Commission on Civil Rights.

Reagan has tried to change policies at both agencies by nominating new, more conservative chairmen. But in both cases, the appointments backfired in bursts of criticism by civil rights groups and Members of Congress.

The President fired Civil Rights Commission chairman Arthur S. Flemming, a persistent critic of Administration policies, last November. But his first nominee as successor, Philadelphia radio preacher Sam B. Hart, stirred a storm of protest when he stated his opposition to the Equal Rights Amendment, busing and civil rights protections for homosexuals. Subsequent disclosures of Hart's failure to pay local taxes and to repay a Small Business Administration loan forced him to withdraw his name last month.

A second nominee for the Civil Rights Commission post, Clarence M. Pendleton Jr., was confirmed by the Senate on March 18 without dissent.

Reagan's original nominee to the EEOC, William M. Bell, sparked immediate protests by civil rights groups. His nomination was withdrawn after it was revealed that in his previous job, as head of a one-man job placement agency, he had failed to find employment for anyone in the preceding year.

Reagan since has nominated assistant Education secretary for civil rights Clarence Thomas to head the EEOC.

CHANGING TIMES

Beyond doubt, the collective effect of the Administration's actions in civil rights areas will be to narrow the campaign against discrimination as compared with previous years. The still unanswered questions are how successful the campaign will be and how it will affect the commitment to equality.

Plotkin, who quit the Justice Department with an editorial blast at the Administration in *The New York Times*, is at one extreme.

"I'd say they're emasculating the civil rights laws as we know them," Plotkin said in an interview. "It's a variant on their economic beliefs--that people should be free to do what they want, that the cream will rise to the top and the rest will fall.

"When you think about the billions of dollars pumped into the economy through the federal government, and the fact that most of those dollars are subject to the civil rights laws, you can see that removing restrictions on, say, grants can have a significant effect on the progress of civil rights."

Deputy attorney general Schmults calls such views "unfortunate."

"I think any time you move off into somewhat uncharted waters, it's easier for people to attack your motives and dedication," he said. "The central role of the Justice Department is to adhere to the rule of law, and to enforce the law fairly and impartially.

"We're trying to have the federal involvement in civil rights targeted to achieve the maximum results in the most productive way."

If that policy change is branded by some as "retrogressive," an official said, "I'm not really sure that you can do much about that." For it is clear that most policy makers view the current protests as remnants of a bygone era in which, they say, racial discrimination was far more prevalent.

"Some of the civil rights groups still think they're back in the '60s, on the road to Selma," said one. "They just don't realize that times have changed."

**GRAPHIC:** Cover Illustration, Shifting Gears on Civil Rights, Geoffrey Moss; Picture 1, Civil rights lawyer William Robinson: "One of my big questions about this Administration is whether it has any concept of ordered social change." Richard A. Bloom; Picture 2, Assistant attorney general for civil rights William Bradford Reynolds: "Despite what you read, we have not stopped civil rights enforcement in its tracks." Richard A. Bloom; Picture 3, Michael M. Uhlmann of the Office of Policy Development: "We've made some mistakes, obviously." Richard A. Bloom; Picture 4, Robert Plotkin, who quit Justice: "I'd say they're emasculating the civil rights laws as we know them." Richard A. Bloom