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102D CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATESMr. _____ introduced the following bill; which was read twice and referred
to the Committee on _____
_____**A BILL**

To amend the Civil Rights Act of 1964 to clarify provisions
regarding disparate impact actions, and for other purposes.

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

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the "Equal Employment
6 Opportunity Act of 1991".

7 **SEC. 2. FINDING AND PURPOSES.**

8 (a) **FINDING.**—Congress finds that the decision of the
9 Supreme Court in *Wards Cove Packing Co. v. Atonio*, 109
10 S. Ct. 2115 (1989) has weakened the scope and effective-
11 ness of Federal civil rights protections.

1 (b) PURPOSES.—The purposes of this Act are—

2 (1) to overrule the treatment of business neces-
3 sity as a defense in *Wards Cove Packing Co. v.*
4 *Atonio* and to codify the meaning of business neces-
5 sity used in *Griggs v. Duke Power Co.*, 401 U.S. 424
6 (1971); and

7 (2) to provide statutory authority and guidelines
8 for the adjudication of disparate impact suits under
9 title VII of the Civil Rights Act of 1964 (42 U.S.C.
10 2000e et seq.).

11 SEC. 3. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

12 (a) IN GENERAL.—Section 703 of the Civil Rights Act
13 of 1964 (42 U.S.C. 2000e-2) is amended by adding at the
14 end the following new subsection:

15 “(k)(1)(A) An unlawful employment practice based
16 on disparate impact is established under this title only if—

17 “(i) a complaining party demonstrates that a
18 particular employment practice or group of employ-
19 ment practices results in a disparate impact on the
20 basis of race, color, religion, sex, or national origin;
21 and

22 “(ii)(I) the respondent fails to demonstrate that
23 the practice or group of practices is required by busi-
24 ness necessity; or

1 "(II) the complaining party makes the demon-
2 stration described in subparagraph (C) with respect
3 to a different employment practice or group of em-
4 ployment practices.

5 "(B)(i) With respect to an unlawful employment
6 practice based on disparate impact as described in sub-
7 section (A), the complaining party shall identify with
8 particularity each employment practice that is responsible
9 in whole or in significant part for the disparate impact,
10 except that if the complaining party can demonstrate to the
11 court, after discovery, that the elements of a respondent's
12 decisionmaking process are not capable of separation for
13 analysis, the group of employment practices as a whole may
14 be analyzed as one employment practice.

15 "(ii) If the elements of a decisionmaking process are
16 capable of separation for analysis, the complaining party
17 must identify each element with particularity, and the re-
18 spondent must demonstrate that the element or elements
19 identified that are responsible in whole or in significant
20 part for the disparate impact are required by business ne-
21 cessity. If the respondent demonstrates that a specific em-
22 ployment practice within a group of employment practices
23 is not responsible in whole or in significant part for the
24 disparate impact, the respondent shall not be required to

1 demonstrate that such practice is required by business ne-
2 cessity.

3 “(C) An employment practice or group of employ-
4 ment practices responsible in whole or in significant part
5 for a disparate impact that is demonstrated to be required
6 by business necessity shall be lawful unless the complain-
7 ing party demonstrates that a different available employ-
8 ment practice or group of employment practices, which
9 would have less disparate impact and make a difference in
10 the disparate impact that is more than merely negligible,
11 would serve the respondent as well.

12 “(2) In deciding whether a respondent has met the
13 standards described in paragraph (1) for business necessity,
14 the court may receive evidence as permitted by the Federal
15 Rules of Evidence, and the court shall give such weight, if
16 any, to the evidence as is appropriate.

17 “(3) A demonstration that an employment practice or
18 group of employment practices is required by business ne-
19 cessity may be used as a defense only against a claim
20 under this subsection.

21 “(4) Notwithstanding any other provision of this title,
22 a rule barring the employment of an individual who cur-
23 rently and knowingly uses or possesses an illegal drug as
24 defined in schedules I and II of section 102(6) of the Con-
25 trolled Substances Act (21 U.S.C. 802(6)), other than the

1 use or possession of a drug taken under the supervision of
2 a licensed health care professional, or any other use or pos-
3 session authorized by the Controlled Substances Act or
4 any other provision of Federal law, shall be considered an
5 unlawful employment practice under this title only if such
6 rule is adopted or applied with an intent to discriminate
7 because of race, color, religion, sex, or national origin.

8 "(5) The mere existence of a statistical imbalance in
9 the work force of an employer on account of race, color,
10 religion, sex, or national origin is not alone sufficient to
11 establish a prima facie case of disparate impact violation.

12 (b) CONSTRUCTION.-- Nothing in the amendment made
13 by subsection (a) shall be construed to overrule any exist-
14 ing case concerning whether recovery is available under
15 title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e
16 et seq.) under a comparable worth theory.

1 SEC. 4. PROHIBITION AGAINST THE DISCRIMINATORY USE OF
2 TEST SCORES.

3 Section 703 of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e-2) (as amended by section 3) is further
5 amended by adding at the end the following new subsec-
6 tion:

7 "(1)(1) It shall be an unlawful employment practice
8 for a respondent, in connection with the selection of refer-
9 ral of applicants or candidates for employment or promo-
10 tion, to adjust the scores of, use different cutoff scores for,
11 or otherwise alter the results of, employment-related tests
12 on the basis of race, color, religion, sex, or national origin.

13 "(2) Paragraph (1) shall not apply to a respondent
14 seeking to comply with a court order aimed at remedying
15 past discrimination."

16 SEC. 5. DEFINITIONS.

17 (a) IN GENERAL.-- Section 701 of the Civil Rights Act
18 of 1964 (42 U.S.C. 2000e) is amended by adding at the
19 end the following new subsections:

20 "(1) The term 'complaining party' means the Com-
21 mission, the Attorney General, or a person who may bring
22 an action or proceeding under this title.

23 "(m) The term 'demonstrates' means meets the bur-
24 dens of production and persuasion.

25 "(n) The term 'group of employment practices'
26 means a combination of particular employment practices in

1 which each practice is responsible in whole or in signifi-
2 cant part for an employment decision.

3 "(o) The term 'required by business necessity'
4 means--

5 "(1) in the case of employment practices in-
6 volving selection, that the practice or group of prac-
7 tices bears a ~~significant~~ ^{manifest} relationship to
8 requirements for effective job performance; and

9 "(2) in the case of other employment decisions
10 not involving employment selection practices as de-
11 scribed in paragraph (1), the practice or group of
12 practices bears a manifest relationship to a legitimate
13 business objective of the employer.

14 "(p) The term 'requirements for effective job per-
15 formance' includes,--

16 "(1) the ability to perform competently the
17 actual work activities lawfully required by the em-
18 ployer for an employment position; and

19 "(2) any other lawful requirement that is impor-
20 tant to the performance of the job, including, but not
21 limited to, factors such as punctuality, attendance, a
22 willingness to avoid engaging in misconduct or insub-
23 ordination, not having a work history demonstrating
24 unreasonable job turnover, and not engaging in con-
25 duct or activity

1 that improperly interferes with the performance of
2 work by others.

3 "(q) The term 'respondent' means an employer, em-
4 ployment agency, labor organization, joint labor-manage-
5 ment committee controlling apprenticeship or other train-
6 ing or retraining program, including an on-the-job training
7 program, or Federal entity or head of a Federal entity sub-
8 ject to section 717."

9 (b) INTERPRETATION.-- It is the intent of Congress in
10 enacting sections 701(o) and 703(k) of the Civil Rights
11 Act of 1964 (as added by subsection (a) of this section and
12 subsection (a) of section (3) respectively) that the sections
13 codify the meaning of business necessity used in Griggs v.
14 Duke Power Co., 401 U.S. 424 (1971) and overrule the treat-
15 ment of business necessity as a defense in Wards Cove Packing
16 Co. v. Atonio, 109 S. Ct. 2115 (1989), with respect to an em-
17 ployment practice or group of employment practices.

18 SEC. 6. COVERAGE OF CONGRESS AND THE AGENCIES OF THE
19 LEGISLATIVE BRANCH.

20 (a) COVERAGE OF THE SENATE.--

21 (1) APPLICATION TO SENATE EMPLOYMENT.-- The
22 rights and protections provided pursuant to the
23 amendments made by this Act shall, subject to para-
24 graphs (2) through (5), apply with respect to any em-

1 ployee in an employment position in the Senate and
2 any employing authority of the Senate.

3 (2) INVESTIGATION AND ADJUDICATION OF
4 CLAIMS.—All claims raised by any individual with
5 respect to Senate employment pursuant to the provi-
6 sions described in paragraph (1) shall be investigated
7 and adjudicated by the Select Committee on Ethics,
8 pursuant to S. Res. 338, 88th Congress, as amended,
9 or such other entity as the Senate may designate.

10 (3) RIGHTS OF EMPLOYEES.—The Committee on
11 Rules and Administration shall ensure that Senate
12 employees are informed of their rights under the pro-
13 visions described in paragraph (1).

14 (4) APPLICABLE REMEDIES.—When assigning
15 remedies to individuals found to have a valid claim
16 under the provisions described in paragraph (1), the
17 Select Committee on Ethics, or such other entity as
18 the Senate may designate, shall to the extent practi-
19 cable apply the same remedies applicable to all other
20 employees covered by the provisions described in
21 paragraph (1). Such remedies shall apply exclusively.

22 (5) EXERCISE OF RULEMAKING POWER.—Notwith-
23 standing any other provision of law, enforcement and
24 adjudication of the rights and protections referred to
25 in paragraph (1) shall be within the exclusive juris-

1 diction of the United States Senate. The provisions
2 of paragraphs (2), (3), and (4) are enacted by the
3 Senate as an exercise of the rulemaking power of the
4 Senate, with full recognition of the right of the
5 Senate to change its rules, in the same manner, and
6 to the same extent, as in the case of any other rule
7 of the Senate.

8 (b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, the purposes of this Act shall, sub-
11 ject to paragraph (2), apply with respect to any em-
12 ployee in an employment position in the House of
13 Representatives and any employing authority of the
14 House of Representatives.

15 (2) EMPLOYMENT IN THE HOUSE.—

16 (A) APPLICATION.—The rights and protec-
17 tions under title VII of the Civil Rights Act of
18 1964 (42 U.S.C. 2000e et seq.) and the amend-
19 ments made by this Act shall, subject to sub-
20 paragraph (B), apply with respect to any em-
21 ployee in an employment position in the House
22 of Representatives and any employing authority
23 of the House of Representatives.

24 (B) ADMINISTRATION.—

1 (i) IN GENERAL.—In the administration
2 of this paragraph, the remedies and proce-
3 dures made applicable pursuant to the reso-
4 lution described in clause (ii) shall apply
5 exclusively.

6 (ii) RESOLUTION.—The resolution re-
7 ferred to in clause (i) is House Resolution
8 15 of the One Hundred First Congress, as
9 agreed to January 3, 1989, or any other
10 provision that continues in effect the provi-
11 sions of, or is a successor to, the Fair Em-
12 ployment Practices Resolution (House Res-
13 olution 558 of the One Hundredth Con-
14 gress, as agreed to October 4, 1988).

15 (C) EXERCISE OF RULEMAKING POWER.—The
16 provisions of subparagraph (B) are enacted by
17 the House of Representatives as an exercise of
18 the rulemaking power of the House of Repre-
19 sentatives, with full recognition of the right of
20 the House to change its rules, in the same
21 manner, and to the same extent as in the case of
22 any other rule of the House.

23 (c) INSTRUMENTALITIES OF CONGRESS.—

24 (1) IN GENERAL.—The rights and protections
25 under title VII of the Civil Rights Act of 1964 and

1 the amendments made by this Act shall, subject to
2 paragraphs (2) and (5), apply with respect to any
3 employee in an employment position in an instru-
4 mentality of the Congress and any chief official of
5 such an instrumentality.

6 (2) ESTABLISHMENT OF REMEDIES AND PROCE-
7 DURES BY INSTRUMENTALITIES.—The chief official of
8 each instrumentality of the Congress shall establish
9 remedies and procedures to be utilized with respect
10 to the rights and protections provided pursuant to
11 paragraph (1). Such remedies and procedures shall
12 apply exclusively.

13 (3) REPORT TO CONGRESS.—The chief official of
14 each instrumentality of the Congress shall, after es-
15 tablishing remedies and procedures for purposes of
16 paragraph (2), submit to the Congress a report de-
17 scribing the remedies and procedures.

18 (4) DEFINITION OF INSTRUMENTALITIES.—For pur-
19 poses of this section, instrumentalities of the Con-
20 gress include the Congressional Budget Office, the
21 General Accounting Office, and the Office of Tech-
22 nology Assessment.

23 (5) CONSTRUCTION.—Nothing in this section
24 shall alter the enforcement procedures for individuals

1 protected under section 717 of the Civil Rights Act
2 of 1964 (42 U.S.C. 2000e-16).

3 SEC. 7. CONSTRUCTION.

4 (a) IN GENERAL.—Except as provided in subsection
5 (b)—

6 (1) nothing in this Act or the amendments made
7 by this Act shall be construed to limit an employer
8 in establishing job requirements that are otherwise
9 lawful under title VII of the Civil Rights Act of
10 1964 (42 U.S.C. 2000e et seq.); and

11 (2) nothing in title VII of the Civil Rights Act
12 of 1964 or this Act shall be construed—

13 (A) to require or encourage an employer to
14 adopt hiring or promotion quotas; or

15 (B) to prevent an employer from hiring the
16 most effective individual for a job.

17 (b) REMEDIES, VOLUNTARY ACTIONS, AND AGREE-
18 MENTS.—Nothing in the amendments made by this Act
19 shall be construed to affect court-ordered remedies, volun-
20 tary employer actions for work force diversity, or affirma-
21 tive action or conciliation agreements, that are otherwise in
22 accordance with the law.

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102D CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. _____ introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To amend the Civil Rights Act of 1964 to clarify provisions
regarding disparate impact actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assem-*
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4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Equal Employment
6 Opportunity Act of 1991".

7 SEC. 2. FINDING AND PURPOSES.

8 (a) FINDING.—Congress finds that the decision of the
9 Supreme Court in *Wards Cove Packing Co. v. Atonio*, 109
10 S. Ct. 2115 (1989) has weakened the scope and effective-
11 ness of Federal civil rights protections.

1 (b) PURPOSES.—The purposes of this Act are—

2 (1) to overrule the treatment of business neces-
3 sity as a defense in *Wards Cove Packing Co. v.*
4 *Atonio* and to codify the meaning of business neces-
5 sity used in *Griggs v. Duke Power Co.*, 401 U.S. 424
6 (1971); and

7 (2) to provide statutory authority and guidelines
8 for the adjudication of disparate impact suits under
9 title VII of the Civil Rights Act of 1964 (42 U.S.C.
10 2000e et seq.).

11 SEC. 3. BURDEN OF PROOF IN DISPARATE IMPACT CASES.

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13 of 1964 (42 U.S.C. 2000e-2) is amended by adding at the
14 end the following new subsection:

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16 on disparate impact is established under this title only if—

17 “(i) a complaining party demonstrates that a
18 particular employment practice or group of employ-
19 ment practices results in a disparate impact on the
20 basis of race, color, religion, sex, or national origin;
21 and

22 “(ii)(I) the respondent fails to demonstrate that
23 the practice or group of practices is required by busi-
24 ness necessity; or

1 "(II) the complaining party makes the demon-
2 stration described in subparagraph (C) with respect
3 to a different employment practice or group of em-
4 ployment practices.

5 "(B)(i) With respect to an unlawful employment
6 practice based on disparate impact, the complaining
7 party shall identify with particularity the employment
8 practice(s) that are responsible in whole or in significant
9 part for the disparate impact, except that if the complain-
10 ing party can demonstrate to the court, after discovery, that
11 the elements of a decisionmaking process are not capable of
12 separation for analysis, the group of employment practices as
13 a whole may be analyzed as one employment practice.

14 "(ii) If the elements of a decisionmaking process are
15 capable of separation for analysis, the complaining party
16 must identify each element with particularity, and the re-
17 spondent must demonstrate that the element or elements
18 identified that are responsible in whole or in significant
19 part for the disparate impact are required by business ne-
20 cessity. If the respondent demonstrates that a specific em-
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22 is not responsible in whole or in significant part for the
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7 ing party demonstrates that a different available employ-
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10 the disparate impact that is more than merely negligible,
11 would serve the respondent as well.

12 “(2) In deciding whether a respondent has met the
13 standards described in paragraph (1) for business necessity,
14 the court may receive evidence as permitted by the Federal
15 Rules of Evidence, and the court shall give such weight, if
16 any, to the evidence as is appropriate.

17 “(3) A demonstration that an employment practice or
18 group of employment practices is required by business ne-
19 cessity may be used as a defense only against a claim
20 under this subsection.

21 “(4) Notwithstanding any other provision of this title,
22 a rule barring the employment of an individual who cur-
23 rently and knowingly uses or possesses an illegal drug as
24 defined in schedules I and II of section 102(6) of the Con-
25 trolled Substances Act (21 U.S.C. 802(6)), other than the

1 use or possession of a drug taken under the supervision of
2 a licensed health care professional, or any other use or pos-
3 session authorized by the Controlled Substances Act or
4 any other provision of Federal law, shall be considered an
5 unlawful employment practice under this title only if such
6 rule is adopted or applied with an intent to discriminate
7 because of race, color, religion, sex, or national origin.

8 “(5) The mere existence of a statistical imbalance in
9 the work force of an employer on account of race, color,
10 religion, sex, or national origin is not alone sufficient to
11 establish a prima facie case of disparate impact violation.

12 “(6) For purposes of this subsection, a respondent
13 may rely on relative qualifications or skills, as determined
14 by relative performance or degrees of success, of an em-
15 ployee or applicant for employment on a selection factor,
16 criterion or procedure, except that if such reliance results
17 in a disparate impact based on race, color, religion, sex, or
18 national origin, such reliance shall be demonstrated by the
19 respondent to be required by business necessity.”.

20 (b) CONSTRUCTION.—Nothing in the amendment made
21 by subsection (a) shall be construed to overrule any exist-
22 ing case concerning whether recovery is available under
23 title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e
24 et seq.) under a comparable worth theory.

1 SEC. 4. PROHIBITION AGAINST THE DISCRIMINATORY USE OF
2 TEST SCORES.

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4 U.S.C. 2000e-2) (as amended by section 3) is further
5 amended by adding at the end the following new subsec-
6 tion:

7 “(1)(1) It shall be an unlawful employment practice
8 for a respondent, in connection with the selection or refer-
9 ral of applicants or candidates for employment or promo-
10 tion, to adjust the scores of, use different cutoff scores for,
11 or otherwise alter the results of, employment-related tests
12 on the basis of race, color, religion, sex, or national origin.

13 “(2) Paragraph (1) shall not apply to a respondent
14 seeking to comply with a court order aimed at remedying
15 past discrimination.”.

16 SEC. 5. DEFINITIONS.

17 (a) IN GENERAL.—Section 701 of the Civil Rights Act
18 of 1964 (42 U.S.C. 2000e) is amended by adding at the
19 end the following new subsections:

20 “(l) The term ‘complaining party’ means the Com-
21 mission, the Attorney General, or a person who may bring
22 an action or proceeding under this title.

23 “(m) The term ‘demonstrates’ means meets the bur-
24 dens of production and persuasion.

25 “(n) The term ‘group of employment practices’
26 means a combination of **distinct** employment practices in

1 which each practice is responsible in whole or in signifi-
2 cant part for an employment decision.

3 "(o) The term 'required by business necessity'
4 means--

5 "(1) in the case of employment practices in-
6 volving selection, that the practice or group of prac-
7 tices bears a manifest relationship to
8 requirements for effective job performance; and

9 "(2) in the case of other employment decisions
10 not involving employment selection practices as de-
11 scribed in paragraph (1), the practice or group of
12 practices bears a manifest relationship to a legitimate
13 business objective of the employer.

14 "(p) The term 'requirements for effective job per-
15 formance' includes--

16 "(1) the ability to perform competently the
17 actual work activities lawfully required by the em-
18 ployer for an employment position; and

19 "(2) any other lawful requirement that is impor-
20 tant to the performance of the job, including factors
21 such as punctuality, attendance, a willingness to
22 avoid engaging in misconduct or insubordination, not
23 having a work history demonstrating unreasonable
24 job turnover, and not engaging in conduct or activity

1 that improperly interferes with the performance of
2 work by others.

3 “(q) The term ‘respondent’ means an employer, em-
4 ployment agency, labor organization, joint labor-manage-
5 ment committee controlling apprenticeship or other train-
6 ing or retraining program, including an on-the-job training
7 program, or Federal entity or head of a Federal entity sub-
8 ject to section 717.”.

9 (b) INTERPRETATION.—It is the intent of Congress in
10 enacting sections 701(o) and 703(k) of the Civil Rights
11 Act of 1964 (as added by subsection (a) of this section)
12 that the sections codify the meaning of business necessity
13 used in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)
14 and overrule the treatment of business necessity as a de-
15 fense in *Wards Cove Packing Co. v. Atonio*, 109 S. Ct.
16 2115 (1989), with respect to an employment practice or
17 group of employment practices.

18 **SEC. 6. COVERAGE OF CONGRESS AND THE AGENCIES OF THE**
19 **LEGISLATIVE BRANCH.**

20 (b) COVERAGE OF THE SENATE.—

21 (1) APPLICATION TO SENATE EMPLOYMENT.—The
22 rights and protections provided pursuant to the
23 amendments made by this Act shall, subject to para-
24 graphs (2) through (5), apply with respect to any em-

1 ployee in an employment position in the Senate and
2 any employing authority of the Senate.

3 (2) INVESTIGATION AND ADJUDICATION OF
4 CLAIMS.—All claims raised by any individual with
5 respect to Senate employment pursuant to the provi-
6 sions described in paragraph (1) shall be investigated
7 and adjudicated by the Select Committee on Ethics,
8 pursuant to S. Res. 338, 88th Congress, as amended,
9 or such other entity as the Senate may designate.

10 (3) RIGHTS OF EMPLOYEES.—The Committee on
11 Rules and Administration shall ensure that Senate
12 employees are informed of their rights under the pro-
13 visions described in paragraph (1).

14 (4) APPLICABLE REMEDIES.—When assigning
15 remedies to individuals found to have a valid claim
16 under the provisions described in paragraph (1), the
17 Select Committee on Ethics, or such other entity as
18 the Senate may designate, shall to the extent practi-
19 cable apply the same remedies applicable to all other
20 employees covered by the provisions described in
21 paragraph (1). Such remedies shall apply exclusively.

22 (5) EXERCISE OF RULEMAKING POWER.—Notwith-
23 standing any other provision of law, enforcement and
24 adjudication of the rights and protections referred to
25 in paragraph (1) shall be within the exclusive juris-

1 diction of the United States Senate. The provisions
2 of paragraphs (2), (3), and (4) are enacted by the
3 Senate as an exercise of the rulemaking power of the
4 Senate, with full recognition of the right of the
5 Senate to change its rules, in the same manner, and
6 to the same extent, as in the case of any other rule
7 of the Senate.

8 (b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

9 (1) IN GENERAL.—Notwithstanding any other
10 provision of law, the purposes of this Act shall, sub-
11 ject to paragraph (2), apply with respect to any em-
12 ployee in an employment position in the House of
13 Representatives and any employing authority of the
14 House of Representatives.

15 (2) EMPLOYMENT IN THE HOUSE.—

16 (A) APPLICATION.—The rights and protec-
17 tions under title VII of the Civil Rights Act of
18 1964 (42 U.S.C. 2000e et seq.) and the amend-
19 ments made by this Act shall, subject to sub-
20 paragraph (B), apply with respect to any em-
21 ployee in an employment position in the House
22 of Representatives and any employing authority
23 of the House of Representatives.

24 (B) ADMINISTRATION.—

1 (i) IN GENERAL.—In the administration
2 of this paragraph, the remedies and proce-
3 dures made applicable pursuant to the reso-
4 lution described in clause (ii) shall apply
5 exclusively.

6 (ii) RESOLUTION.—The resolution re-
7 ferred to in clause (i) is House Resolution
8 15 of the One Hundred First Congress, as
9 agreed to January 3, 1989, or any other
10 provision that continues in effect the provi-
11 sions of, or is a successor to, the Fair Em-
12 ployment Practices Resolution (House Res-
13 olution 558 of the One Hundredth Con-
14 gress, as agreed to October 4, 1988).

15 (C) EXERCISE OF RULEMAKING POWER.—The
16 provisions of subparagraph (B) are enacted by
17 the House of Representatives as an exercise of
18 the rulemaking power of the House of Repre-
19 sentatives, with full recognition of the right of
20 the House to change its rules, in the same
21 manner, and to the same extent as in the case of
22 any other rule of the House.

23 (c) INSTRUMENTALITIES OF CONGRESS.—

24 (1) IN GENERAL.—The rights and protections
25 under title VII of the Civil Rights Act of 1964 and

1 the amendments made by this Act shall, subject to
2 paragraphs (2) and (5), apply with respect to any
3 employee in an employment position in an instru-
4 mentality of the Congress and any chief official of
5 such an instrumentality.

6 (2) ESTABLISHMENT OF REMEDIES AND PROCE-
7 DURES BY INSTRUMENTALITIES.—The chief official of
8 each instrumentality of the Congress shall establish
9 remedies and procedures to be utilized with respect
10 to the rights and protections provided pursuant to
11 paragraph (1). Such remedies and procedures shall
12 apply exclusively.

13 (3) REPORT TO CONGRESS.—The chief official of
14 each instrumentality of the Congress shall, after es-
15 tablishing remedies and procedures for purposes of
16 paragraph (2), submit to the Congress a report de-
17 scribing the remedies and procedures.

18 (4) DEFINITION OF INSTRUMENTALITIES.—For pur-
19 poses of this section, instrumentalities of the Con-
20 gress include the Congressional Budget Office, the
21 General Accounting Office, and the Office of Tech-
22 nology Assessment.

23 (5) CONSTRUCTION.—Nothing in this section
24 shall alter the enforcement procedures for individuals

1 protected under section 717 of the Civil Rights Act
2 of 1964 (42 U.S.C. 2000e-16).

3 SEC. 7. CONSTRUCTION.

4 (a) IN GENERAL.—Except as provided in subsection
5 (b)—

6 (1) nothing in this Act or the amendments made
7 by this Act shall be construed to limit an employer
8 in establishing job requirements that are otherwise
9 lawful under title VII of the Civil Rights Act of
10 1964 (42 U.S.C. 2000e et seq.); and

11 (2) nothing in title VII of the Civil Rights Act
12 of 1964 or this Act shall be construed—

13 (A) to require or encourage an employer to
14 adopt hiring or promotion quotas; or

15 (B) to prevent an employer from hiring the
16 most effective individual for a job.

17 (b) REMEDIES, VOLUNTARY ACTIONS, AND AGREE-
18 MENTS.—Nothing in the amendments made by this Act
19 shall be construed to affect court-ordered remedies, volun-
20 tary employer actions for work force diversity, or affirma-
21 tive action or conciliation agreements, that are otherwise in
22 accordance with the law.

102D CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. _____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To strengthen and improve Federal civil rights laws, and for other purposes.

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

4 **SECTION 1. SHORT TITLE.**

5 This Act may be cited as the "Civil Rights Restora-
6 tion Act of 1991".

7 **SEC. 2. FINDING AND PURPOSE.**

8 (a) **FINDING.**—Congress finds that legislation is neces-
9 sary to provide additional protections against unlawful dis-
10 crimination in employment.

1 (b) PURPOSE.—The purpose of this Act is to respond
2 to recent decisions of the Supreme Court by expanding the
3 scope of relevant civil rights statutes in order to provide
4 adequate protection to victims of discrimination.

5 SEC. 3. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN
6 THE MAKING AND ENFORCEMENT OF CONTRACTS.

7 Section 1977 of the Revised Statutes (42 U.S.C.
8 1981) is amended—

9 (1) by inserting “(a)” before “All persons
10 within”; and

11 (2) by adding at the end the following new sub-
12 sections:

13 “(b) For purposes of this section, the term ‘make and
14 enforce contracts’ includes the making, performance,
15 modification, and termination of contracts, and the enjoy-
16 ment of all benefits, privileges, terms, and conditions of
17 the contracts.

18 “(c) The rights protected by this section are protected
19 against impairment by nongovernmental discrimination
20 and impairment under color of State law.”.

1 SEC. 4. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CON-
2 sideration of RACE, COLOR, RELIGION, SEX, OR
3 NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

4 (a) IN GENERAL.—Section 703 of the Civil Rights Act
5 of 1964 (42 U.S.C. 2000e-2) is amended by adding at the
6 end the following new subsection:

7 “(k) Except as otherwise provided in this title, an un-
8 lawful employment practice is established when the com-
9 plaining party demonstrates that race, color, religion, sex,
10 or national origin was a motivating factor for any employ-
11 ment practice, even though other factors also motivated the
12 practice.”.

13 (b) ENFORCEMENT PROVISIONS.—Section 706(g) of
14 such Act (42 U.S.C. 2000e-5(g)) is amended—

15 (1) by designating the first through third sen-
16 tences as paragraph (1);

17 (2) by designating the fourth sentence as para-
18 graph (2)(A); and

19 (3) by adding at the end the following new sub-
20 paragraph:

21 “(B) In a case where an individual proves a violation
22 under section 703(k) and a respondent demonstrates that
23 the respondent would have taken the same action in the
24 absence of any discrimination, the court—

1 “(i) may grant declaratory relief, injunctive
2 relief (except as provided in clause (ii)), attorney’s
3 fees, and costs; and

4 “(ii) shall not award damages or issue an order
5 requiring any admission, reinstatement, hiring, pro-
6 motion, or payment, described in subparagraph
7 (A).”.

8 **SEC. 5. FACILITATING PROMPT AND ORDERLY RESOLUTION OF**
9 **CHALLENGES TO EMPLOYMENT PRACTICES IM-**
10 **PLEMENTING LITIGATED OR CONSENT JUDG-**
11 **MENTS OR ORDERS.**

12 Section 703 of the Civil Rights Act of 1964 (42
13 U.S.C. 2000e-2) (as amended by section 4 of this Act) is
14 further amended by adding at the end the following new
15 subsection:

16 “(1)(A) Notwithstanding any other provision of
17 law, and except as provided in paragraph (3), an employ-
18 ment practice that implements and is within the scope of a
19 litigated or consent judgment or order that—

20 “(i) was entered earlier than the date of the en-
21 actment of this subsection; and

22 “(ii) resolves a claim of employment discrimi-
23 nation under the Constitution or Federal civil rights
24 laws,

1 may not be challenged under the circumstances described
2 in subparagraph (B).

3 “(B) A practice described in subparagraph (A) may
4 not be challenged in a claim under the Constitution or Fed-
5 eral civil rights laws—

6 “(i) by a person who, prior to the entry of the
7 judgment or order described in subparagraph (A),
8 had—

9 “(I) actual notice of the proposed judg-
10 ment or order sufficient to apprise such person
11 that such judgment or order might affect the in-
12 terests of such person and that an opportunity
13 was available to present objections to such
14 judgment or order; and

15 “(II) a reasonable opportunity to present
16 objections to such judgment or order;

17 “(ii) by a person whose interests were ade-
18 quately represented by another person who chal-
19 lenged such judgment or order prior to or after the
20 entry of such judgment or order; or

21 “(iii) if the court that entered the judgment or
22 order determines that reasonable efforts were made
23 to provide notice to interested persons.

24 “(2)(A) Notwithstanding any other provision of law,
25 and except as provided in paragraph (3), an employment

1 practice that implements and is within the scope of a liti-
2 gated or consent judgment or order that—

3 “(i) was entered not earlier than the date of the
4 enactment of this subsection; and

5 “(ii) resolves a claim of employment discrimi-
6 nation under the Constitution or Federal civil rights
7 laws,

8 may not be challenged under the circumstances described
9 in subparagraph (B).

10 “(B) A practice described in subparagraph (A) may
11 not be challenged in a claim under the Constitution or Fed-
12 eral civil rights laws—

13 “(i) by a person who, during the period of
14 notice regarding the judgment or order described in
15 subparagraph (A)—

16 “(I) was an employee of, former employee
17 of, or applicant to, the respondent; and

18 “(II) prior to the entry of such judgment or
19 order, had actual notice of the proposed judg-
20 ment or order in sufficient detail to apprise such
21 person—

22 “(aa) that such judgment or order
23 might adversely affect the interests and
24 legal rights of such person;

1 “(bb) of any numerical relief in the
2 proposed judgment or order on the basis of
3 race, color, religion, sex, or national origin
4 for any job, position, or other employment
5 opportunity;

6 “(cc) that an opportunity was avail-
7 able to present objections to such judgment
8 or order by a future date certain; and

9 “(dd) that such person would likely
10 be barred from challenging the proposed
11 judgment or order after such date;

12 “(ii) by a person who, during the period of
13 notice regarding the judgment or order—

14 “(I) was an employee of, former employee
15 of, or applicant to, the respondent; and

16 “(II) prior to the entry of such judgment or
17 order, failed to receive actual notice meeting the
18 criteria described in clause (i)(II) of the judg-
19 ment or order, despite the diligent and best ef-
20 forts of the parties to provide individual notice;

21 or

22 “(iii) by a person whose interests were ade-
23 quately and competently represented by a similarly
24 situated person who had previously challenged the
25 judgment or order on the same legal grounds and

delated

1 with a similar factual situation, unless there has been
2 an intervening change in law or fact.

3 “(3) Nothing in this subsection shall be construed
4 to—

5 “(A) alter the standards for intervention under
6 rule 24 of the Federal Rules of Civil Procedure or
7 apply to the rights of parties who have successfully
8 intervened pursuant to such rule in the proceeding in
9 which the parties intervened;

10 “(B) apply to the rights of parties to the action
11 in which the litigated or consent judgment or order
12 was entered, or of members of a class represented or
13 sought to be represented in such action, or of mem-
14 bers of a group on whose behalf relief was sought in
15 such action by the Federal Government;

16 “(C) prevent challenges to a litigated or consent
17 judgment or order on the ground that such judgment
18 or order was obtained through collusion or fraud, or
19 is transparently invalid or was entered by a court
20 lacking subject matter jurisdiction; or

21 “(D) authorize or permit the denial to any
22 person of the due process of law required by the
23 Constitution.

24 “(4) Any action not precluded under this subsection
25 that challenges an employment consent judgment or order

1 described in paragraph (1) or (2) shall be brought in the
2 court, and if possible before the judge, that entered such
3 judgment or order. Nothing in this subsection shall pre-
4 clude a transfer of such action pursuant to section 1404 of
5 title 28, United States Code.”.

6 **SEC. 6. DEFINITIONS.**

7 Section 701 of the Civil Rights Act of 1964 (42
8 U.S.C. 2000e) is amended by adding at the end the follow-
9 ing new subsections:

10 “(l) The term ‘complaining party’ means the Com-
11 mission, the Attorney General, or a person who may bring
12 an action or proceeding under this title.

13 “(m) The term ‘demonstrates’ means meets the bur-
14 dens of production and persuasion.

15 “(n) The term ‘respondent’ means an employer, em-
16 ployment agency, labor organization, joint labor-manage-
17 ment committee controlling apprenticeship or other train-
18 ing or retraining program, including an on-the-job training
19 program, or Federal entity or head of a Federal entity sub-
20 ject to section 717.”.

21 **SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY**
22 **SENIORITY SYSTEMS.**

23 Section 706(e) of the Civil Rights Act of 1964 (42
24 U.S.C. 2000e-5(e)) is amended—

1 (1) by inserting "(1)" before "A charge under
2 this section"; and

3 (2) by adding at the end the following new
4 paragraph:

5 "(2) For purposes of this section, an alleged unlawful
6 employment practice occurs—

7 "(A) when a seniority system is adopted, when
8 an individual becomes subject to a seniority system,
9 or when a person aggrieved is injured by the applica-
10 tion of a seniority system or provision of the system;
11 and

12 "(B) if the system is alleged to have been
13 adopted for an intentionally discriminatory purpose,
14 in violation of this title, whether or not that discrimi-
15 natory purpose is apparent on the face of the seniori-
16 ty provision."

17 **SEC. 8. AUTHORIZING AWARD OF EXPERT FEES.**

18 Section 706(k) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000e-5(k)) is amended by inserting "(including
20 expert fees)" after "attorney's fee".

21 **SEC. 9. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE**
22 **OF LIMITATIONS IN ACTIONS AGAINST THE FEDER-**
23 **AL GOVERNMENT.**

24 Section 717 of the Civil Rights Act of 1964 (42
25 U.S.C. 2000e-16) is amended—

1 (1) in subsection (c), by striking "thirty days"
2 and inserting "90 days"; and

3 (2) in subsection (d), by inserting before the
4 period "and the same interest to compensate for
5 delay in payment shall be available as in cases in-
6 volving nonpublic parties."

7 **SEC. 10. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DIS-**
8 **CRIMINATION IN EMPLOYMENT ACT OF 1967.**

9 Section 7(e)(2) of the Age Discrimination in Employ-
10 ment Act of 1967 (29 U.S.C. 626(e)(2)) is amended to read
11 as follows:

12 "(2) If a charge filed with the Commission is dis-
13 missed or the proceedings of the Commission are other-
14 wise terminated by the Commission, the Commission shall
15 notify the individual referred to in subsection (d). The indi-
16 vidual may bring an action against the respondent named
17 in the charge not earlier than 60 days after the date on
18 which the charge was timely filed and not later than 90
19 days after the date of the receipt of the notice."

20 **SEC. 11. COVERAGE OF CONGRESS AND THE AGENCIES OF THE**
21 **LEGISLATIVE BRANCH.**

22 **(a) COVERAGE OF THE SENATE.—**

23 **(1) APPLICATION TO SENATE EMPLOYMENT.—**The
24 rights and protections provided pursuant to section
25 1977 of the Revised Statutes (42 U.S.C. 1981), this

1 Act, and the amendments made by this Act shall,
2 subject to paragraphs (2) through (5), apply with re-
3 spect to any employee in an employment position in
4 the Senate and any employing authority of the
5 Senate.

6 (2) INVESTIGATION AND ADJUDICATION OF
7 CLAIMS.—All claims raised by any individual with
8 respect to Senate employment pursuant to the provi-
9 sions described in paragraph (1) shall be investigated
10 and adjudicated by the Select Committee on Ethics,
11 pursuant to S. Res. 338, 88th Congress, as amended,
12 or such other entity as the Senate may designate.

13 (3) RIGHTS OF EMPLOYEES.—The Committee on
14 Rules and Administration shall ensure that Senate
15 employees are informed of their rights under the pro-
16 visions described in paragraph (1).

17 (4) APPLICABLE REMEDIES.—When assigning
18 remedies to individuals found to have a valid claim
19 under the provisions described in paragraph (1), the
20 Select Committee on Ethics, or such other entity as
21 the Senate may designate, shall to the extent practi-
22 cable apply the same remedies applicable to all other
23 employees covered by the provisions described in
24 paragraph (1). Such remedies shall apply exclusively.

1 (5) EXERCISE OF RULEMAKING POWER.—Notwith-
2 standing any other provision of law, enforcement and
3 adjudication of the rights and protections referred to
4 in paragraph (1) shall be within the exclusive juris-
5 diction of the United States Senate. The provisions
6 of paragraphs (2), (3), and (4) are enacted by the
7 Senate as an exercise of the rulemaking power of the
8 Senate, with full recognition of the right of the
9 Senate to change its rules, in the same manner, and
10 to the same extent, as in the case of any other rule
11 of the Senate.

12 (b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the purposes of this Act shall, sub-
15 ject to paragraph (2), apply with respect to any em-
16 ployee in an employment position in the House of
17 Representatives and any employing authority of the
18 House of Representatives.

19 (2) EMPLOYMENT IN THE HOUSE.—

20 (A) APPLICATION.—The rights and protec-
21 tions under title VII of the Civil Rights Act of
22 1964 (42 U.S.C. 2000e et seq.), the Age Dis-
23 crimination in Employment Act of 1967 (42
24 U.S.C. 621 et seq.), section 1977 of the Revised
25 Statutes, this Act, and the amendments made by

1 this Act shall, subject to subparagraph (B),
2 apply with respect to any employee in an em-
3 ployment position in the House of Representa-
4 tives and any employing authority of the House
5 of Representatives.

6 (B) ADMINISTRATION.—

7 (i) IN GENERAL.—In the administration
8 of this paragraph, the remedies and proce-
9 dures made applicable pursuant to the reso-
10 lution described in clause (ii) shall apply
11 exclusively.

12 (ii) RESOLUTION.—The resolution re-
13 ferred to in clause (i) is House Resolution
14 15 of the One Hundred First Congress, as
15 agreed to January 3, 1989, or any other
16 provision that continues in effect the provi-
17 sions of, or is a successor to, the Fair Em-
18 ployment Practices Resolution (House Res-
19 olution 558 of the One Hundredth Con-
20 gress, as agreed to October 4, 1988).

21 (C) EXERCISE OF RULEMAKING POWER.—The
22 provisions of subparagraph (B) are enacted by
23 the House of Representatives as an exercise of
24 the rulemaking power of the House of Repre-
25 sentatives, with full recognition of the right of

1 the House to change its rules, in the same
2 manner, and to the same extent as in the case of
3 any other rule of the House.

4 (c) INSTRUMENTALITIES OF CONGRESS.—

5 (1) IN GENERAL.—The rights and protections
6 under title VII of the Civil Rights Act of 1964, the
7 Age Discrimination in Employment Act of 1967,
8 section 1977 of the Revised Statutes, this Act, and
9 the amendments made by this Act, shall, subject to
10 paragraphs (2) and (5), apply with respect to any
11 employee in an employment position in an instru-
12 mentality of the Congress and any chief official of
13 such an instrumentality.

14 (2) ESTABLISHMENT OF REMEDIES AND PROCE-
15 DURES BY INSTRUMENTALITIES.—The chief official of
16 each instrumentality of the Congress shall establish
17 remedies and procedures to be utilized with respect
18 to the rights and protections provided pursuant to
19 paragraph (1). Such remedies and procedures shall
20 apply exclusively.

21 (3) REPORT TO CONGRESS.—The chief official of
22 each instrumentality of the Congress shall, after es-
23 tablishing remedies and procedures for purposes of
24 paragraph (2), submit to the Congress a report de-
25 scribing the remedies and procedures.

1 (4) DEFINITION OF INSTRUMENTALITIES.—For pur-
2 poses of this section, instrumentalities of the Con-
3 gress include the Architect of the Capitol, the Con-
4 gressional Budget Office, the General Accounting
5 Office, the Government Printing Office, the Office
6 of Technology Assessment, and the United States
7 Botanic Garden.

8 (5) CONSTRUCTION.—Nothing in this section
9 shall alter the enforcement procedures for individuals
10 protected under section 717 of the Civil Rights Act
11 of 1964 (42 U.S.C. 2000e-16) or section 15 of the
12 Age Discrimination in Employment Act of 1967 (42
13 U.S.C. 633a).

14 **SEC. 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.**

15 Where appropriate and to the extent authorized by
16 law, the use of alternative means of dispute resolution, in-
17 cluding settlement negotiations, conciliation, facilitation,
18 mediation, factfinding, mini-trials, and arbitration, is en-
19 couraged to resolve disputes arising under the Acts amend-
20 ed by this Act.

21 **SEC. 13. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), this Act and the amendments made by this Act shall
24 take effect upon enactment.

1 (b) CHALLENGES TO EMPLOYMENT PRACTICES IMPLE-
2 MENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—

3 The amendments made by section 5 shall apply to all pro-
4 ceedings pending on or commenced after June 12, 1989.

5 SEC. 14. SEVERABILITY.

6 If any provision of this Act, or an amendment made
7 by this Act, or the application of such provision to any
8 person or circumstances is held to be invalid, the remain-
9 der of this Act and the amendments made by this Act, and
10 the application of such provision to other persons and cir-
11 cumstances, shall not be affected.

102D CONGRESS
1ST SESSION

S. _____

Post Dale Cerveater

Pg. 5+7

IN THE SENATE OF THE UNITED STATES

Mr. _____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To strengthen and improve Federal civil rights laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assem-*
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5 This Act may be cited as the "Civil Rights Restora-
6 tion Act of 1991".

7 **SEC. 2. FINDING AND PURPOSE.**

8 (a) **FINDING.**—Congress finds that legislation is neces-
9 sary to provide additional protections against unlawful dis-
10 crimination in employment.

1 (b) PURPOSE.—The purpose of this Act is to respond
2 to recent decisions of the Supreme Court by expanding the
3 scope of relevant civil rights statutes in order to provide
4 adequate protection to victims of discrimination.

5 SEC. 3. PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN
6 THE MAKING AND ENFORCEMENT OF CONTRACTS.

7 Section 1977 of the Revised Statutes (42 U.S.C.
8 1981) is amended—

9 (1) by inserting “(a)” before “All persons
10 within”; and

11 (2) by adding at the end the following new sub-
12 sections:

13 “(b) For purposes of this section, the term ‘make and
14 enforce contracts’ includes the making, performance,
15 modification, and termination of contracts, and the enjoy-
16 ment of all benefits, privileges, terms, and conditions of
17 the contracts.

18 “(c) The rights protected by this section are protected
19 against impairment by nongovernmental discrimination
20 and impairment under color of State law.”.

1 SEC. 4. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CON-
2 sideration of RACE, COLOR, RELIGION, SEX, OR
3 NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.

4 (a) IN GENERAL.—Section 703 of the Civil Rights Act
5 of 1964 (42 U.S.C. 2000e-2) is amended by adding at the
6 end the following new subsection:

7 “(k) Except as otherwise provided in this title, an un-
8 lawful employment practice is established when the com-
9 plaining party demonstrates that race, color, religion, sex,
10 or national origin was a motivating factor for any employ-
11 ment practice, even though other factors also motivated the
12 practice.”

13 (b) ENFORCEMENT PROVISIONS.—Section 706(g) of
14 such Act (42 U.S.C. 2000e-5(g)) is amended—

15 (1) by designating the first through third sen-
16 tences as paragraph (1);

17 (2) by designating the fourth sentence as para-
18 graph (2)(A); and

19 (3) by adding at the end the following new sub-
20 paragraph:

21 “(B) In a case where an individual proves a violation
22 under section 703(k) and a respondent demonstrates that
23 the respondent would have taken the same action in the
24 absence of any discrimination, the court—

1 “(i) may grant declaratory relief, injunctive
2 relief (except as provided in clause (ii)), attorney’s
3 fees, and costs; and

4 “(ii) shall not award damages or issue an order
5 requiring any admission, reinstatement, hiring, pro-
6 motion, or payment, described in subparagraph
7 (A).”.

8 **SEC. 5. FACILITATING PROMPT AND ORDERLY RESOLUTION OF**
9 **CHALLENGES TO EMPLOYMENT PRACTICES IM-**
10 **PLEMENTING LITIGATED OR CONSENT JUDG-**
11 **MENTS OR ORDERS.**

12 Section 703 of the Civil Rights Act of 1964 (42
13 U.S.C. 2000e-2) (as amended by section 4 of this Act) is
14 further amended by adding at the end the following new
15 subsection:

16 “(1)(1)(A) Notwithstanding any other provision of
17 law, and except as provided in paragraph (3), an employ-
18 ment practice that implements and is within the scope of a
19 litigated or consent judgment or order that—

20 “(i) was entered earlier than the date of the en-
21 actment of this subsection; and

22 “(ii) resolves a claim of employment discrimi-
23 nation under the Constitution or Federal civil rights
24 laws,

1 may not be challenged under the circumstances described
2 in subparagraph (B).

3 "(B) A practice described in subparagraph (A) may
4 not be challenged in a claim under the Constitution or Fed-
5 eral civil rights laws --

6 "(i) by a person who, prior to the entry of the
7 judgment or order described in subparagraph (A),
8 had --

9 "(I) actual notice of the proposed judg-
10 ment or order sufficient to apprise such person
11 that such judgment or order might affect the in-
12 terests of such person and that an opportunity
13 was available to present objections to such
14 judgment or order; and

15 (II) a reasonable opportunity to present
16 objections to such judgment or order; or

17 "(ii) by a person whose interests were ade-
18 quately represented by another person who chal-
19 lenged such judgment or order prior to or after the
20 entry of such judgment or order.

21 "(2)(A) Notwithstanding any other provision of law,
22 and except as provided in paragraph (3), an employment

1 practice that implements and is within the scope of a liti-
2 gated or consent judgment or order that—

3 “(i) was entered not earlier than the date of the
4 enactment of this subsection; and

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11 not be challenged in a claim under the Constitution or Fed-
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15 subparagraph (A)—

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17 of, or applicant to, the respondent; and

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19 order, had actual notice of the proposed judg-
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21 person—

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23 might adversely affect the interests and
24 legal rights of such person;

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2 proposed judgment or order on the basis of
3 race, color, religion, sex, or national origin
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5 opportunity;

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8 or order by a future date certain; and

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10 be barred from challenging the proposed
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13 quately and competently represented by a similarly
14 situated person who had previously challenged the
15 judgment or order on the same legal grounds and



1 with a similar factual situation, unless there has been
2 an intervening change in law or fact.

3 “(3) Nothing in this subsection shall be construed
4 to—

5 “(A) alter the standards for intervention under
6 rule 24 of the Federal Rules of Civil Procedure or
7 apply to the rights of parties who have successfully
8 intervened pursuant to such rule in the proceeding in
9 which the parties intervened;

10 “(B) apply to the rights of parties to the action
11 in which the litigated or consent judgment or order
12 was entered, or of members of a class represented or
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14 bers of a group on whose behalf relief was sought in
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16 “(C) prevent challenges to a litigated or consent
17 judgment or order on the ground that such judgment
18 or order was obtained through collusion or fraud, or
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20 lacking subject matter jurisdiction; or

21 “(D) authorize or permit the denial to any
22 person of the due process of law required by the
23 Constitution.

24 “(4) Any action not precluded under this subsection
25 that challenges an employment consent judgment or order

1 described in paragraph (1) or (2) shall be brought in the
2 court, and if possible before the judge, that entered such
3 judgment or order. Nothing in this subsection shall pre-
4 clude a transfer of such action pursuant to section 1404 of
5 title 28, United States Code.”.

6 **SEC. 6. DEFINITIONS.**

7 Section 701 of the Civil Rights Act of 1964 (42
8 U.S.C. 2000e) is amended by adding at the end the follow-
9 ing new subsections:

10 “(l) The term ‘complaining party’ means the Com-
11 mission, the Attorney General, or a person who may bring
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14 dens of production and persuasion.

15 “(n) The term ‘respondent’ means an employer, em-
16 ployment agency, labor organization, joint labor-manage-
17 ment committee controlling apprenticeship or other train-
18 ing or retraining program, including an on-the-job training
19 program, or Federal entity or head of a Federal entity sub-
20 ject to section 717.”.

21 **SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY**
22 **SENIORITY SYSTEMS.**

23 Section 706(e) of the Civil Rights Act of 1964 (42
24 U.S.C. 2000e-5(e)) is amended—

1 (1) by inserting "(1)" before "A charge under
2 this section"; and

3 (2) by adding at the end the following new
4 paragraph:

5 "(2) For purposes of this section, an alleged unlawful
6 employment practice occurs—

7 "(A) when a seniority system is adopted, when
8 an individual becomes subject to a seniority system,
9 or when a person aggrieved is injured by the applica-
10 tion of a seniority system or provision of the system;
11 and

12 "(B) if the system is alleged to have been
13 adopted for an intentionally discriminatory purpose,
14 in violation of this title, whether or not that discrimi-
15 natory purpose is apparent on the face of the seniori-
16 ty provision."

17 **SEC. 8. AUTHORIZING AWARD OF EXPERT FEES.**

18 Section 706(k) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000e-5(k)) is amended by inserting "(including
20 expert fees)" after "attorney's fee".

21 **SEC. 9. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE**
22 **OF LIMITATIONS IN ACTIONS AGAINST THE FEDER-**
23 **AL GOVERNMENT.**

24 Section 717 of the Civil Rights Act of 1964 (42
25 U.S.C. 2000e-16) is amended—

1 (1) in subsection (c), by striking "thirty days"
2 and inserting "90 days"; and

3 (2) in subsection (d), by inserting before the
4 period "and the same interest to compensate for
5 delay in payment shall be available as in cases in-
6 volving nonpublic parties."

7 **SEC. 10. NOTICE OF LIMITATIONS PERIOD UNDER THE AGE DIS-**
8 **CRIMINATION IN EMPLOYMENT ACT OF 1967.**

9 Section 7(e)(2) of the Age Discrimination in Employ-
10 ment Act of 1967 (29 U.S.C. 626(e)(2)) is amended to read
11 as follows:

12 "(2) If a charge filed with the Commission is dis-
13 missed or the proceedings of the Commission are other-
14 wise terminated by the Commission, the Commission shall
15 notify the individual referred to in subsection (d). The indi-
16 vidual may bring an action against the respondent named
17 in the charge not earlier than 60 days after the date on
18 which the charge was timely filed and not later than 90
19 days after the date of the receipt of the notice."

20 **SEC. 11. COVERAGE OF CONGRESS AND THE AGENCIES OF THE**
21 **LEGISLATIVE BRANCH.**

22 **(a) COVERAGE OF THE SENATE.—**

23 **(1) APPLICATION TO SENATE EMPLOYMENT.—**The
24 rights and protections provided pursuant to section
25 1977 of the Revised Statutes (42 U.S.C. 1981), this

1 Act, and the amendments made by this Act shall,
2 subject to paragraphs (2) through (5), apply with re-
3 spect to any employee in an employment position in
4 the Senate and any employing authority of the
5 Senate.

6 (2) INVESTIGATION AND ADJUDICATION OF
7 CLAIMS.—All claims raised by any individual with
8 respect to Senate employment pursuant to the provi-
9 sions described in paragraph (1) shall be investigated
10 and adjudicated by the Select Committee on Ethics,
11 pursuant to S. Res. 338, 88th Congress, as amended,
12 or such other entity as the Senate may designate.

13 (3) RIGHTS OF EMPLOYEES.—The Committee on
14 Rules and Administration shall ensure that Senate
15 employees are informed of their rights under the pro-
16 visions described in paragraph (1).

17 (4) APPLICABLE REMEDIES.—When assigning
18 remedies to individuals found to have a valid claim
19 under the provisions described in paragraph (1), the
20 Select Committee on Ethics, or such other entity as
21 the Senate may designate, shall to the extent practi-
22 cable apply the same remedies applicable to all other
23 employees covered by the provisions described in
24 paragraph (1). Such remedies shall apply exclusively.

1 (5) EXERCISE OF RULEMAKING POWER.—Notwith-
2 standing any other provision of law, enforcement and
3 adjudication of the rights and protections referred to
4 in paragraph (1) shall be within the exclusive juris-
5 diction of the United States Senate. The provisions
6 of paragraphs (2), (3), and (4) are enacted by the
7 Senate as an exercise of the rulemaking power of the
8 Senate, with full recognition of the right of the
9 Senate to change its rules, in the same manner, and
10 to the same extent, as in the case of any other rule
11 of the Senate.

12 (b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the purposes of this Act shall, sub-
15 ject to paragraph (2), apply with respect to any em-
16 ployee in an employment position in the House of
17 Representatives and any employing authority of the
18 House of Representatives.

19 (2) EMPLOYMENT IN THE HOUSE.—

20 (A) APPLICATION.—The rights and protec-
21 tions under title VII of the Civil Rights Act of
22 1964 (42 U.S.C. 2000e et seq.), the Age Dis-
23 crimination in Employment Act of 1967 (42
24 U.S.C. 621 et seq.), section 1977 of the Revised
25 Statutes, this Act, and the amendments made by

1 this Act shall, subject to subparagraph (B),
2 apply with respect to any employee in an em-
3 ployment position in the House of Representa-
4 tives and any employing authority of the House
5 of Representatives.

6 (B) ADMINISTRATION.—

7 (i) IN GENERAL.—In the administration
8 of this paragraph, the remedies and proce-
9 dures made applicable pursuant to the reso-
10 lution described in clause (ii) shall apply
11 exclusively.

12 (ii) RESOLUTION.—The resolution re-
13 ferred to in clause (i) is House Resolution
14 15 of the One Hundred First Congress, as
15 agreed to January 3, 1989, or any other
16 provision that continues in effect the provi-
17 sions of, or is a successor to, the Fair Em-
18 ployment Practices Resolution (House Res-
19 olution 558 of the One Hundredth Con-
20 gress, as agreed to October 4, 1988).

21 (C) EXERCISE OF RULEMAKING POWER.—The
22 provisions of subparagraph (B) are enacted by
23 the House of Representatives as an exercise of
24 the rulemaking power of the House of Repre-
25 sentatives, with full recognition of the right of

1 the House to change its rules, in the same
2 manner, and to the same extent as in the case of
3 any other rule of the House.

4 (c) INSTRUMENTALITIES OF CONGRESS.—

5 (1) IN GENERAL.—The rights and protections
6 under title VII of the Civil Rights Act of 1964, the
7 Age Discrimination in Employment Act of 1967,
8 section 1977 of the Revised Statutes, this Act, and
9 the amendments made by this Act, shall, subject to
10 paragraphs (2) and (5), apply with respect to any
11 employee in an employment position in an instru-
12 mentality of the Congress and any chief official of
13 such an instrumentality.

14 (2) ESTABLISHMENT OF REMEDIES AND PROCE-
15 DURES BY INSTRUMENTALITIES.—The chief official of
16 each instrumentality of the Congress shall establish
17 remedies and procedures to be utilized with respect
18 to the rights and protections provided pursuant to
19 paragraph (1). Such remedies and procedures shall
20 apply exclusively.

21 (3) REPORT TO CONGRESS.—The chief official of
22 each instrumentality of the Congress shall, after es-
23 tablishing remedies and procedures for purposes of
24 paragraph (2), submit to the Congress a report de-
25 scribing the remedies and procedures.

1 (4) DEFINITION OF INSTRUMENTALITIES.—For pur-
2 poses of this section, instrumentalities of the Con-
3 gress include the Architect of the Capitol, the Con-
4 gressional Budget Office, the General Accounting
5 Office, the Government Printing Office, the Office
6 of Technology Assessment, and the United States
7 Botanic Garden.

8 (5) CONSTRUCTION.—Nothing in this section
9 shall alter the enforcement procedures for individuals
10 protected under section 717 of the Civil Rights Act
11 of 1964 (42 U.S.C. 2000e-16) or section 15 of the
12 Age Discrimination in Employment Act of 1967 (42
13 U.S.C. 633a).

14 **SEC. 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.**

15 Where appropriate and to the extent authorized by
16 law, the use of alternative means of dispute resolution, in-
17 cluding settlement negotiations, conciliation, facilitation,
18 mediation, factfinding, mini-trials, and arbitration, is en-
19 couraged to resolve disputes arising under the Acts amend-
20 ed by this Act.

21 **SEC. 13. EFFECTIVE DATE.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), this Act and the amendments made by this Act shall
24 take effect upon enactment.

1 (b) CHALLENGES TO EMPLOYMENT PRACTICES IMPLE-
2 MENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—

3 The amendments made by section 5 shall apply to all pro-
4 ceedings pending on or commenced after June 12, 1989.

5 SEC. 14. SEVERABILITY.

6 If any provision of this Act, or an amendment made
7 by this Act, or the application of such provision to any
8 person or circumstances is held to be invalid, the remain-
9 der of this Act and the amendments made by this Act, and
10 the application of such provision to other persons and cir-
11 cumstances, shall not be affected.