

Originally Processed With FOIA(s):
1998-0004-F[2]; 1999-0285-F

FOIA Number:
S

FOIA MARKER

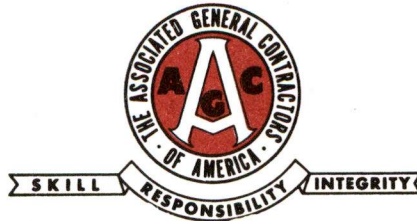
**This is not a textual record. This is used as an
administrative marker by the George Bush Presidential
Library Staff.**

Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files

OA/ID Number: 29146
Folder ID Number: 29146-004

Folder Title:
Civil Rights (1 of 2) 1991 [6]

Stack:	Row:	Section:	Shelf:	Position:
G	15	24	7	5



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • FAX (202) 347-4004

MARVIN M. BLACK, President

ROBINS H. JACKSON, Senior Vice President

BYRON L. FARRELL, Vice President

LAWRENCE J. MCGOUGH, Treasurer

HUBERT BEATTY, Executive Vice President

May 31, 1991

Dear Representative:

The Associated General Contractors of America, representing more than 33,000 firms, including 8,000 of America's leading general contracting firms, the vast majority of which are small, family-owned companies, respectfully urges you to oppose H.R.1 and the Democratic leadership so-called compromise to that bill.

The proposed changes are, at best, cosmetic in impact, and in some instances make the bill worse than last year's bill.

The compromise still provides for jury trials. By placing a cap on punitive damages of \$150,000 and allowing for that amount or for an amount equal to the award for compensatory damages, **whichever is greater**, the compromise effectively sets a \$150,000 floor on awards.

This extreme penalty provision will serve as a cudgel to employers forcing them to covertly engage in preferential hiring quotas to achieve statistical balance in the workforce, in the effort to avoid costly litigation and possible monetary penalties for damages. With the new language banning hiring by quota, the employer will also face the potential of reverse discrimination lawsuits if it is believed that preferential hiring and promotional decisions have been utilized.

Rather than clarifying enforcement of the nation's civil rights laws, H.R.1 and the proposed compromise, will lead to increased polarization in the workplace, increased litigation as employers will be forced to defend any or all factors used in making hiring and promotion decisions, and greatly increase the time needed to resolve disputes.

Rather than moving us toward a one-nation America, H.R.1 and the compromise will serve to further fracture the many and diverse peoples in this country.

The AGC urges your vote against H.R. 1 and the so-called compromise.

Sincerely,


Susan J. Loomis
Executive Director
Congressional Relations



Legislative Bulletin

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 [202] 393-2040

LEGISLATIVE BULLETIN #9-91

May 29, 1991

TO: House Contacts, State Chairmen (via Fax),
Regional Coordinators (via Fax)

FROM: Heidi H. Stirrup *H. H. S.*

SUBJECT: "Modified" Version of H.R. 1 - Still a Quota Bill

Last Tuesday, May 21, supporters of H.R. 1, the so-called "Civil Rights and Women's Equity in Employment Act of 1991," held a press conference and announced a "new, improved," modified version of H.R. 1 to try and win additional votes not only for final passage, but to override an expected Presidential veto. (If all 435 Members are present and voting, a two-thirds majority or 290 votes are necessary to override a veto. Last year the House vote on Kennedy-Hawkins was 273-154, well short of the votes needed to override.)

Next week the House is scheduled to take action on civil rights legislation. They will first vote on a Republican substitute to H.R. 1 (H.R. 1375) and then vote on this latest "modified" Democratic substitute (H.R. 1). **Calls, letters and contacts with your Representatives ARE NEEDED NOW to oppose final passage of H.R. 1.**

Review of this latest proposal reveals no substantive changes, but only cosmetic fixes which will not provide legitimate legal defenses for employers. President Bush renewed his veto threat on May 23 after Attorney General Richard Thornburgh reviewed the sponsors' latest version of H.R. 1 which showed there were no significant changes to warrant the President's support for quota inducing legislation.

A brief analysis of the cosmetic changes include:

- The language included to expressly prohibit quotas is meaningless because employers will still be forced to covertly engage in race and sex preferences to correct statistical imbalances in their workforce in order to avoid litigation which, under H.R. 1, will be rarely won. Furthermore, this leaves employers more vulnerable to being hit from both sides at the same time: **the bill retains its heavy pressure on employers to adopt informal quotas in self-defense, while the new "anti-quota" language increases the jeopardy of "reverse discrimination" lawsuits from non-minority workers. Employers are caught in the classic "Catch-22" muddle.**
- The definition of business necessity still does not codify the Griggs standard and unfairly restricts the range of factors an employer may use in evaluating whether or not to hire or retain workers.

- The proposal changes the damages provision by placing a \$150,000 cap on punitive damages or up to the amount of compensatory damages (pain and suffering) whichever is higher, effectively setting a \$150,000 floor on awards.
- Jury trials are still required.
- Statute of limitations is increased threefold instead of fourfold.

ACTION REQUESTED: Contact your Representative (202-225-3121) and urge his/her opposition to H.R. 1 or any substitute. Letters to your Members should be addressed:

The Honorable _____
U.S. House of Representatives
Washington, DC 20515

If you need assistance or additional information, please call Sue Loomis or Heidi Stirrup in National AGC's Congressional Relations Division (202-393-2040). Please let us know the results of your contacts.

cc: Chapter Managers (via Fax)



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MAY 22, 1991

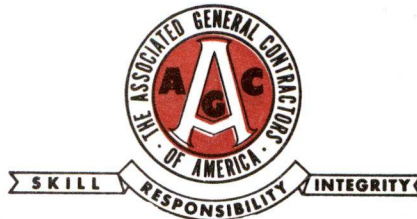
AG
202-514-2007
(TDD) 202-514-1888

Attorney General Dick Thornburgh issued the following statement regarding the so-called "compromise" proposal on civil rights announced in the House of Representatives.

"Last year President Bush expressed a strong desire to sign civil rights legislation which would help make the American workplace a level playing field for all Americans. But as he indicated in his Rose Garden Address regarding civil rights on May 17, 1990, he will not sign any bill which would force employers to hire by the numbers. He will not sign a quota bill. He will also not sign a bill with provisions which will serve mainly to line lawyers' pockets. Nothing has changed. The President will veto any legislation which has undergone only cosmetic changes and which still forces quotas and seeks to boost lawyers' fees.

"Instead of removing from the bill the provisions that would cause employers to resort to quotas, all the proponents of the so-called 'compromise' seem to intend, is to move words around and say that quotas are not allowed by the bill. That doesn't solve the quota problem. H.R. 1 remains a quota bill and a lawyer's bonanza, virtually no different from the bill the President vetoed last year. He will not sign it. Those who are interested in true civil rights legislation should support the President's bill, H.R. 1375.

#



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • FAX (202) 347-4004

MARVIN M. BLACK, President

ROBINS H. JACKSON, Senior Vice President

BYRON L. FARRELL, Vice President

LAWRENCE J. MCGOUGH, Treasurer

HUBERT BEATTY, Executive Vice President

May 28, 1991

Dear Fellow AGC Member:

The House of Representatives is expected to vote on the so-called "Civil Rights" bill (H.R. 1) on June 5. It is very important that you contact your Representative now by phone and mailgram and oppose the bill!

H.R. 1 is worse than the bill vetoed by President Bush last year. Its' supporters are trying to reach last year's vote total of 273, and will offer a so-called "compromise" during House floor consideration. The proposal is strictly cosmetic, retaining the most objectionable features of the legislation.

QUOTAS - while adding language that "quotas are not permitted," the bill will still encourage frivolous lawsuits and will force employers to resort to employment quotas to avoid costly lawsuits based on alleged disparate impact of a group of employment practices.

PENALTIES - the "compromise" changes the unlimited punitive and compensatory damages provision to one which would "limit" punitive damages to \$150,000 or up to the amount of compensatory damages (for pain and suffering), whichever is greater. This effectively sets a \$150,000 floor on awards.

Consider how these "compromises" can impact your company and your ability to absorb increased litigation expenses.

Calls and mailgrams to your Member of the House are urgently needed now. If we are able to keep the number of votes for the bill below 273, we will have achieved a significant victory, which will be of help when a Senate bill is introduced by Senator Kennedy. Your Member can be reached at:

The Honorable _____
U.S. House of Representatives
Washington, D.C. 20515

(202) 224-3121

Sincerely,

Marvin M. Black
President

"Civil Rights" Quotas Beatable. . . "Peter Cockshaw did the construction world a big favor when he suggested the use of payroll stuffers to have our employees help convince Congress that H.R. 1 and any quota-inducing alleged "civil rights" legislation is grossly unfair," said AGC President Marvin M. Black, who also "urges all construction employers to avail of this opportunity to have all members of the construction team, including employees who would be subjected to quota hiring and quota discharge, to act now in their own interests."

AGC chapters were urged by fax on May 19 to encourage chapter members and local construction groups to act now.

Compromise legislation now being contemplated in the face of inability to enact H.R. 1 will be exactly that except that those compromised will be employers subject to multiple damage awards of \$150,000 each.

The payroll stuffer message is:

? DO YOU WANT QUOTAS... ?

- | | |
|--|---|
| ☐ for each craft... | ☐ for men or women... |
| ☐ for each project... | ☐ for each racial group... |

? DO YOU WANT TO STOP QUOTAS ?

The same kind of "special preference" government contract quotas that may have already cost our company — and you — work.

CONGRESS WILL REJECT QUOTAS AND REGARD YOU NOT AS A PERCENTAGE BUT FOR YOUR INDIVIDUAL WORTH IF ...

Congress knows you want Equal Opportunity...Not the inequality of Quotas.

If you agree that equal opportunity is fair — AND THAT QUOTAS ARE UNFAIR — please let Congress know your views.

(Mail the following to your U.S. Representative and Senators)

Date: _____

Representative _____
U.S. House of Representatives
Washington, DC 20515

Senator _____
United States Senate
Washington, DC 20510

Dear Representative/Senator _____

Support Equal Opportunity, but please vote against any "Civil Rights" Quota Bill!
If I am unfair, tell me why...please.

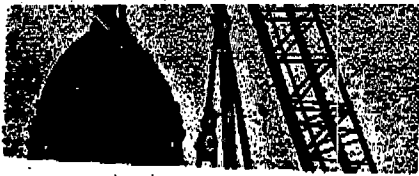
Sincerely,

(Name)

(Street)

(City) (State) (Zip)

Please contact AGC Chapters for details on Congressional names.



Legislative Bulletin

SENT VIA FAX

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 [202] 393-2040

TO: Jim Supica, Legislative Committee Chairman
Legislative Committee Regional Coordinators
Chapter Managers

FROM: Sue Loomis *[Signature]*

SUBJECT: UPDATE: H.R. 1, Civil Rights Amendments Schedule

DATE: May 24, 1991

The House Democratic Leadership has announced its schedule for consideration of H.R. 1, the Civil Rights Amendments bill.

The schedule (always subject to change) is:

Wednesday, May 29 - H.R. 1 comes before the Rules Committee to determine floor procedure

Thursday, May 30 - Vote on accepting the Rule on the House floor; if Rule is accepted, begin 1 - 2 hours of general debate on the bill

June 4 - 5 - Continue on House floor with 1 - 2 hours of general debate followed by "adequate time" to debate any substitutes or amendments allowed by the rule; vote on any substitutes and on final passage

Although the Democratic leadership has announced a so-called compromise, it does little more than move H.R. 1 closer to the Kennedy-Hawkins version of the bill which was vetoed last session.

The pressure for quota-hiring remains, as class action intentional discrimination cases involving numerous plaintiffs eligible for punitive and compensatory damages remains unchanged; the definition of "business necessity," thought changed, still fails to codify the Griggs decision language; and liability for damages remains steep.

If the total number of votes for H.R. 1 is below 273 (last years level of support) we will have scored an emotional and strategic victory, and created a less favorable scenario for Senate consideration.

cc: AGCA OFFICERS



Legislative Bulletin

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 [202] 393-2040

LEGISLATIVE MEMORANDUM

May 21, 1991

TO: AGC Chapter Managers
FROM: Heidi H. Stirrup *HHS*
SUBJECT: **Timing - House Action on H.R. 1 "Civil Rights Act of 1991"**

As of late last night, H.R. 1, the so-called Civil Rights Act of 1991, was pulled from the Rules Committee and House floor calendar. Our next best "guess" on timing will be sometime after the Memorial Day recess break when Congress returns May 28, 1991.

As previously reported, sponsors of H.R. 1 are desperately trying to win additional votes to get close to the 290 votes they need (which is a two-thirds majority) to override President Bush's threatened veto (if 435 members vote). Last year, Kennedy Hawkins quota bill won 273 votes and if supporters get even one less vote than 273 this year, we win.

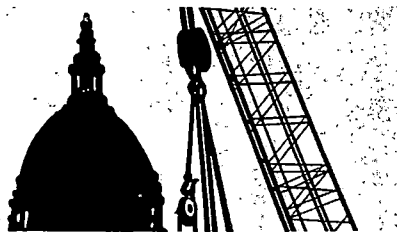
By attempting to disguise the quota bill with thinly veiled amendments, supporters hope to win wavering conservative Democrats and moderate Republicans. The fact that the bill was pulled from the schedule indicates that the supporters were unsuccessful, so far, in winning new votes.

Now more than ever, AGC members are encouraged to contact their representatives and urge them to reject H.R. 1 and any phony modifications under the "compromise" label.

Below is a list of Members most vulnerable to fall for a "modified" quota bill:

Cramer (D-AL-5)
Riggs (R-CA-1)
Johnson (R-CT-6)
James (R-FL-4)
Thomas (D-GA-1)
Tauzin (D-LA-3)
Hayes (D-LA-7)
Gilchrest (R-MD-1)

Pursell (R-MI-2)
Upton (R-MI-4)
Roukema (R-NJ-5)
Houghton (R-NY-34)
Valentine (D-NC-2)
Hobson (R-OH-7)
Brewster (D-OK-3)
Barton (R-TX-6)
Bliley (R-VA-3)



Legislative Bulletin

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 [202] 393-2040

LEGISLATIVE MEMORANDUM #6-91

May 19, 1991

TO: AGC Chapter Managers

FROM: Heidi H. Stirrup *H.H.S.*

SUBJECT: H.R. 1 "Civil Rights Act of 1991" - Status: House Action

To update my previous May 10 Legislative Bulletin regarding possible House consideration of H.R. 1, timing has now shifted to this coming week. House Rules Committee is expected to take up H.R. 1 on Tuesday, May 21 and the Democratic Leadership will bring H.R. 1 to the House floor on Wednesday, May 22 IF the latest proposed "compromised" version appears to have sufficient support.

It is difficult to pin down this moving target, but as best we can determine (official statutory language will not be available until Tuesday 5/21) the so-called "compromise" on H.R. 1 is nothing more than a smokescreen for political cover to win support from conservative Southern Democrats and moderate Northern Republicans. In fact, elements of this "new proposal" effectively bring H.R. 1 closer to Kennedy-Hawkins Quota bill of last year which was opposed by AGC and successfully vetoed by President Bush.

Without knowing exactly what the Rules Committee will allow in terms of amendments, it is our understanding that the likely outcome will be two substitutes: one authored by the Democrats containing "feel-good" provisions to soften criticism that the bill would impose a de facto system of racial and gender quotas in hiring; and the other substitute sponsored by Republicans (the proposal submitted on behalf of President Bush, H.R. 1375).

Although AGC has not endorsed either bill, we are concentrating our opposition on H.R. 1, the Democrat-sponsored version, and will urge Members to oppose the "compromise" H.R.1.

Attached is an analysis of the proposed changes to H.R. 1 as contained in the 8-point paper previously distributed with the May 10 Legislative Bulletin. Thank you for your efforts to help defeat this onerous legislation. Continued calls/contacts with Members is especially important over the next several days. I will keep you apprised of further developments.

AN ANALYSIS OF THE SO-CALLED "COMPROMISE" AMENDMENTS TO H.R. 1

Proposed Changes

Explanation

Impact on Main Street Business

Changes business necessity definition to "substantial and manifest relationship to the requirements for effective job performance." A statement is to be inserted that this definition is meant to codify the Griggs decision.

Neither this definition nor the definition currently in H.R. 1 truly codifies Griggs. Both are unprecedented, subjective criteria.

The proposed "new" definitions establish unworkable, narrow and subjective standards for small employers. The definitions are inappropriate in a small business setting; small employers do not utilize sophisticated testing or hiring practices. Despite legislative disclaimers to the contrary, employers will choose quotas rather than face an impossible standard of proof.

Places an "affirmative obligation" on plaintiffs to challenge specific practices unless the court determines that plaintiffs cannot identify specific practices.

This amendment is virtually meaningless. It still allows the grouping of practices, creating a nearly impossible standard for employers who must defend an unspecified group of employment practices as non-discriminatory. It makes no change from H.R. 1.

Small business owners will face a daunting task defending all of their business practices against a nearly impossible burden of proof.

Amends H.R. 1 to make it clear that an employer "may rely" on merit and qualifications as basis for employment decisions.

This "feel good" amendment is smoke and mirrors, designed to give an illusory protection to employers. However, this change would not constitute a legal defense for an employer.

This "legislative disclaimer" is meaningless, given the legal framework established by the bill. It provides no defense for small business owners.

Proposed Changes (continued)

Tightens plaintiff's obligation to prove discrimination was a "motivating factor" in the employment decision.

Explanation

"Motivating factor" is language from the original Civil Rights Act of 1990. Unless the law specifically states that discrimination was the motivating factor, "motivating" and "contributing" are virtually interchangeable.

Impact on Main Street Business

This is no compromise on language. It is simply a restatement of language contained in last year's bill. This provision holds an employer liable if a discriminatory factor was any part of an employer's decision.

"Makes clear" an employer's right to determine the minimal requirements for a job.

Another "feel good" amendment.

Main Street business will have no legal protection from this deceptive amendment.

Lowers statute of limitations from 2 years to 18 months.

In current civil rights law, the statute of limitations is 180 days; "lowering" it from 2 years to 18 months is still a tripling of current law.

This so-called "compromise" would increase 2 the statute of limitations by only three times instead of four. Small firms, with limited record-keeping capability will find themselves at a significant and costly legal disadvantage.

Allows for negotiation of voluntary waiver of attorneys' fees.

This amendment would still permit attorneys to hold a settlement hostage until the attorneys fees are paid.

Holding a settlement hostage holds a small business hostage. Bankruptcy will result. This amendment is designed to further enhance the true benefactors of this bill -- trial lawyers.

Limits retroactivity of bill to apply to pending cases, not cases where final judgment has been rendered.

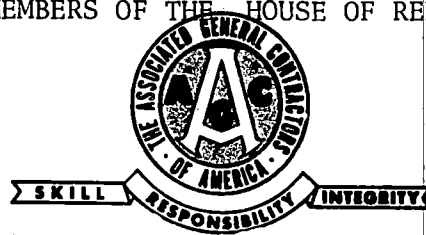
Limiting retroactivity to "only" pending cases will have little impact. The vast majority of these cases are still pending.

Small business owners operate on the basis of the law in existence at the time. To apply this law retroactively would unfairly disadvantage small employers who cannot afford to retain counsel on a permanent basis. Retroactivity causes delay and additional legal fees.

THE TWO MOST SIGNIFICANT PROBLEMS STILL REMAIN IN THE BILL:

CREATION OF LITIGATION NIGHTMARES AND IMPOSITION OF QUOTAS

Conspicuously absent from the bill or the proposed changes is any mention of damages. The damages section of H.R. 1 (or an alternative) is the overwhelming concern of small business. It is expected, however, that punitive damages will be capped at \$150,000 or an amount equal to compensatory damages. Obviously this is no real cap at all. If the compensatory damage award is higher than \$150,000, damages could be **unlimited**. Moreover, the civil rights community has made no secret of its desire for unlimited damages and its intention to lift this cap at a later date. Besides punitive and compensatory damages, the small business will be hit with huge attorneys' fees, expert witness fees, statistical analysis costs, and other incidental legal fees associated with the case. Finally, any support for this "modified" version will force Main Street business to hire by quotas as the only practical defense against damages.



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • FAX (202) 347-4004

MARVIN M. BLACK, President

ROBINS H. JACKSON, Senior Vice President

BYRON L. FARRELL, Vice President

LAWRENCE J. MCGOUGH, Treasurer

HUBERT BEATTY, Executive Vice President

May 13, 1991

Dear Representative:

The U.S. House of Representatives will soon consider omnibus civil rights legislation (H.R. 1) and the 33,000 member companies of the Associated General Contractors of America (AGC) urge you to oppose this quota-inducing legislation.

Most AGC member firms are small, family-owned businesses. As such, these member companies are most concerned over provisions in H.R. 1 which impose major new burdens on employers to defend the number of minorities, women and others in each of their job groups. Further, H.R. 1 makes employer defenses so narrow and difficult that businesses would have no practical alternative to employment quotas.

Despite what proponents claim about simply restoring our nation's civil rights laws to pre-1989, H.R. 1 goes far beyond the original goals and objectives of the civil rights movement and completely rewrites 25 years of equal employment law. No where is that more apparent than in the area of damages and jury trials. H.R. 1 turns a make-whole remedial system into a tort-based litigation bonanza benefitting trial lawyers, plaintiff's lawyers and the entire legal profession. Providing for unlimited punitive and compensatory damages when an employer is unable to prove his innocence is reason enough for employers to resort to surreptitious quota-hiring and avoid the open ended liability H.R. 1 now imposes.

AGC strongly opposes H.R. 1 for its quota inducing provisions, the likelihood of endless, expensive litigation, the abandonment of make-whole relief in favor of jury trials awarding limitless damages and for the inherent divisive, unfair advantage this legislation would place on some groups over others.

Apart from legislation that has no limits on either punitive or compensatory damages, the vast majority of construction firms would be obliged to hire on a quota basis even if faced with awards of \$100,000. Any small business faced with said awards to even a small number of workers has no alternative other than hiring and firing by quota.

We urge you to reject H.R. 1. Thank you for the opportunity to present our views.

Sincerely,


Susan J. Loomis
Executive Director
Congressional Relations



Legislative Bulletin

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E Street, N.W. Washington, D.C. 20006 [202] 393-2040

A
C
T
I
O
N

R
E
Q
U
E
S
T
E
D

LEGISLATIVE BULLETIN #5-91

May 10, 1991

TO: House Contacts, State Chairmen, Regional Coordinators

FROM: Heidi H. Stirrup *H. H. L.*

SUBJECT: H.R. 1 "Civil Rights Act of 1991"/House Consideration Possible
May 15, 1991

The controversial quota legislation, H.R. 1, which was favorably reported from both committees of jurisdiction in slightly different forms, is now ready for full House consideration and is expected to be brought up Wednesday, May 15 or Thursday, May 16. (A possibility also remains that the schedule for floor debate could slip to the week of May 20, but we are preparing for the earlier date.)

H.R. 1 must first clear the House Rules Committee where the terms of the debate are set. Amendments are expected to be offered, some of which are designed to truly improve the bill, others will appear to provide an illusory "fix" in hopes of garnering additional support.

Proponents of H.R. 1 are guarding their strategy and specific legislative language of proposed changes is not available. However, the attached eight-point paper has been circulated from the Democratic Whip's office suggesting potential agreements between civil rights groups and "the business community."

Despite reports in the media that the business community has negotiated with and reached tentative agreements on various proposals, no agreements exist. AGC, along with hundreds of business organizations, never participated in any negotiations and certainly never reached agreement over any compromise. AGC has steadfastly opposed H.R. 1 and continues to do so for several reasons:

- H.R. 1 neither restores nor strengthens our nation's civil rights laws. H.R. 1 goes far beyond the original goals and objectives of the civil rights movement and completely rewrites 25 years of equal employment law;
- H.R. 1 imposes major new burdens on employers to defend the number of minorities, women and others in each of their job groups. It makes employer defenses so narrow and difficult that businesses would have no practical alternative to employment quotas;

- Jury trials would be available for the first time in Title VII (discrimination) cases, and employees would be permitted to recover compensatory and punitive damages;
- Court decrees that mandate preferential treatment for minorities would be far more difficult to attack;
- The time in which a Title VII (discrimination) complaint could be filed would be extended from 180 days to as much as 18 months to two years; and,
- H.R. 1 will generate endless litigation, at the expense of conciliation, and to the primary benefit of the nation's trial lawyers.

ACTION REQUESTED:

The time to contact your Representative is **NOW!** Urge your Representative to oppose H.R. 1 in no matter what thinly veiled disguise proponents may attempt to use. This is a quota bill pure and simple and will cost your company hundreds of thousands of dollars in protracted litigation.

Below is a target list of key swing votes. These votes are either undecided or could waiver and may fall for a meaningless compromise. Particular attention should be paid to these 50 swing votes.

Thank you for your assistance. Please report any information on your representatives' position to Sue Loomis or Heidi Stirrup (202/393-2040).

HHS/gh
Attachment
cc: Chapter Managers

Key Swing Votes

Browder (D-AL-3)	Meyers (R-KS-3)	Schulze (R-PA-5)
Cramer (D-AL-5)	Hubbard (D-KY-1)	Machtley (R-RI-1)
Erdreich (D-AL-5)	Mazzoli (D-KY-3)	Derrick (D-SC-3)
Harris (D-AL-7)	Hayes (D-LA-7)	Patterson (D-SC-4)
Alexander (D-AR-1)	Zimmer (R-NJ-12)	Spratt (D-SC-5)
Anthony (D-AR-4)	Gilman (R-NY-22)	Chapman (D-TX-1)
Riggs (R-CA-1)	Boehlert (R-NY-25)	Hall (D-TX-4)
Johnson (R-CT-6)	Walsh (R-NY-27)	Edwards (D-TX-11)
Johnston (D-FL-14)	Horton (R-NY-29)	Geren (D-TX-12)
Ros-Lehtinen (R-FL-18)	LaFalce (D-NY-32)	Sarpalius (D-TX-13)
Thomas (D-GA-1)	Houghton (R-NY-34)	Laughlin (D-TX-14)
Hatcher (D-GA-2)	Valentine (D-NC-2)	Orton (D-UT-3)
Darden (D-GA-7)	Lancaster (D-NC-3)	Bliley (R-VA-3)
Rowland (D-GA-8)	Neal (D-NC-5)	Payne (D-VA-5)
LaRocco (D-ID-1)	Luken (D-OH-1)	Olin (D-VA-6)
Stallings (D-ID-2)	Regula (R-OH-1)	Klug (R-WI-2)
Russo (D-IL-3)	Brewster (D-OK-3)	

POTENTIAL AGREEMENTS BETWEEN CIVIL RIGHTS GROUPS AND THE BUSINESS COMMUNITY

1. **BUSINESS NECESSITY** – The operative words of the definition would be "substantial and manifest relationship" and "effective job performance."

The term 'required by business necessity' means the practice or group of practices must bear a substantial and manifest relationship to the requirements for effective job performance.

An amendment would make clear that this subsection codifies Griggs v. Duke Power Co. as to the meaning of 'business necessity' and the type and sufficiency of evidence required to prove 'business necessity'.

2. **DISPARATE IMPACT CASES** – H.R. 1 would be amended to place an affirmative obligation on plaintiffs to challenge specific practices unless the court determines that plaintiffs cannot identify specific practices.

An amendment would also make clear that an employer may defend against a challenge to a group of practices by demonstrating that a "specific practice does not contribute in a meaningful way" to the disparity.

3. **RELATIVE QUALIFICATIONS** – An amendment would make clear that an employer may rely on merit and qualifications as the basis for employment decisions.

4. **MIXED MOTIVE CASES** – An amendment would tighten plaintiff's obligation to establish a clear connection between the discrimination and the challenged employment decision – the discrimination must be a "motivating" factor, not just a "contributing" factor in the decision.

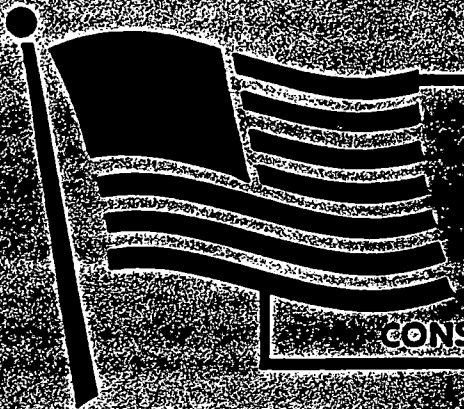
5. **ADDITIONAL QUALIFICATIONS LANGUAGE** – An additional amendment would make clear an employer's right to determine the minimal requirements for a job.

An amendment would also make clear that voluntary affirmative actions for workforce diversity would be protected.

6. **The STATUTE OF LIMITATIONS** would be lowered from two years to 18 months.

7. **COERCED WAIVER OF ATTORNEY'S FEES** – would still be prohibited, but allows for negotiations of voluntary waiver. Eliminates self-enforcing provision opposed by business.

8. **RETROACTIVITY** – new law would apply to pending cases, but not to cases where a final judgement has been rendered.



LEGISLATIVE

BULLETIN

CONSTRUCTORS ASSOCIATION OF WESTERN PENNA.



1201 Banksville Road
Pittsburgh, Pa. 15216
Phone: (412) 343-8000

May 20, 1991

To: CAWP and H2AP Contractor Members

From: Arthur A. Prado, Executive Director

Re: Civil Rights Act of 1991 - H.R. 1

The Civil Rights Act of 1991 may be voted on during the last week of May. The Civil Rights Act of 1991 is worse than the 1990 Act and goes far beyond restoring rights which were taken away by recent Supreme Court decisions. In brief, your Company's compliance will ONLY be measured by the number of minority groups and females you have on your payroll. If you have fewer minorities and females than are represented in the population surrounding your project, then you are potentially guilty of discrimination and liable for unlimited damages. Remember, it doesn't cost anyone to file a complaint of discrimination and further the complainant does not even have to be a qualified applicant for work.

This Bill endangers the jobs of all of your employees in that your Company will have no choice but to defend itself against discrimination charges and unlimited damage awards by hiring by race, sex and religion quotas and forgetting about loyalty, skill, work attitude and production. In order for this Bill to be defeated, it is important that you generate as many letters and phone calls to legislators against its' passage as possible. Copies of the attached letter should be included with your Company's paychecks. All you need do is reproduce this letter (front and back) in your offices or call the Association with the number of employees you have on your payroll and we will provide you with enough letters for each employee. Also, have each management and supervisory employee of your Company write a letter to their legislator now.

Generate as many phone calls as you can to your Congressmen urging them to vote "no" on The Civil Rights Act. Don't be reluctant to call! Congressional aides will ask about the purpose of your call. Upon hearing your opinion, they will note that your opinion has been recorded. This will not result in any in-depth conversation on the merits of the Bill. So make the call and help yourself. Request that others in your company call also. Now is the time for you to act. Don't delay.

AAP/bn

Enclosure

? DO YOU WANT QUOTAS... ?

- for each craft...
- for each project...
- for men or women...
- for each racial group...

? DO YOU WANT TO STOP QUOTAS ?

The same kind of "special preference" government contract quotas that may have already cost your company — and you — work.

CONGRESS WILL REJECT QUOTAS AND REGARD YOU NOT AS A PERCENTAGE BUT FOR YOUR INDIVIDUAL WORTH IF ...

Congress knows you want Equal Opportunity...Not the inequality of Quotas.

If you agree that equal opportunity is fair — AND THAT QUOTAS ARE UNFAIR — please let Congress know your views.

(Mail the following to your U.S. Representative and Senators)

Date: _____

Representative _____
U.S. House of Representatives
Washington, DC 20515

Senator _____
United States Senate
Washington, DC 20510

Dear Representative/Senator _____

Support Equal Opportunity, but please vote against the "Civil Rights" Quota Bill!
If I am unfair, tell me why...please.

Sincerely,

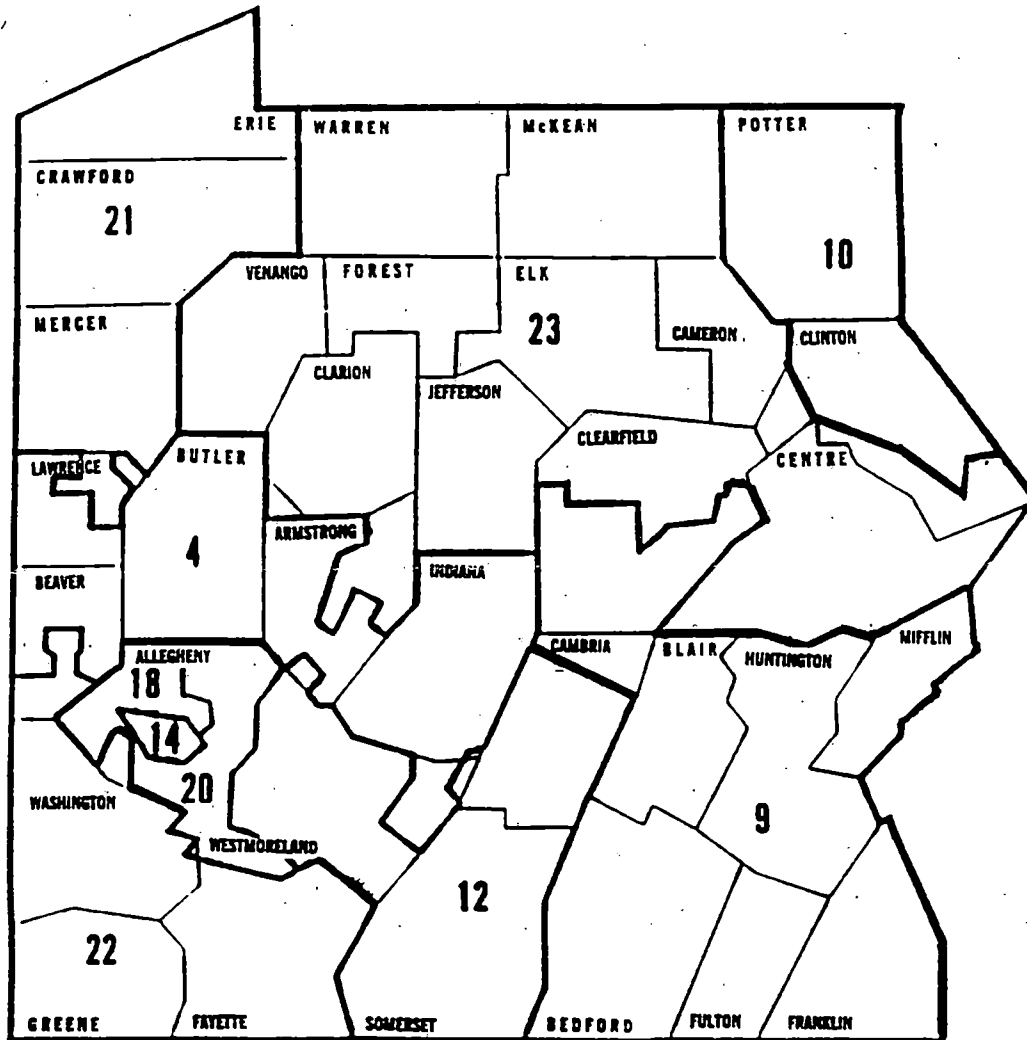
(Name)

(Street)

(City)

(State)

STATE CONGRESSIONAL DISTRICTS



DISTRICT #4
Joseph P. Kolter (D)
1322 7th Avenue
Beaver Falls, PA 15010
202/225-2565

DISTRICT #9
E.G. (Bud) Shuster (R)
R.D. #2, Box 711
Altoona, PA 16601
202/225-2431

DISTRICT #10
Joseph M. McDade (R)
514 Scranton Life Bldg.
Scranton, PA 18503
202/225-3731

DISTRICT #12
John P. Murtha (D)
P.O. Box 780
Johnstown, PA 15907
202/225-2065

DISTRICT #14
William H. Coyne (D)
1000 Liberty Avenue
Pittsburgh, PA 15222
202/225-2301

DISTRICT #18
Rick Santorum (D)
127 Seminole Drive
McKeesport, PA 15228
202/225-2135

DISTRICT #20
Joseph M. Gaydos (D)
318 Fifth Avenue
McKeesport, PA 15132
202/225-4631

DISTRICT #21
Tom Ridge (R)
108 Federal Office Bldg.
Erie, PA 16501
202/225-5406

DISTRICT #22
Austin J. Murphy (D)
306 Fallowfield Avenue
Charleroi, PA 15022
202/225-4665

DISTRICT #23
William F. Clinger, Jr. (R)
Rm. 805, Pennbank Bldg.
Warren, PA 16365
202/225-5121

Senator Harris Wofford (D)
277 Russell Senate Office Bldg.
Washington, D.C. 20510-3801
202/224-6324

Senator Arlen Specter (R)
303 Hart Senate Office Bldg.
Washington, D.C. 20510-3802
202/224-4254

May 30, 1991
91-114

H.R. 1 As Redrafted By the Rules Committee

Bottom Line

The Rules Committee Amendment is little different than the bill vetoed by President Bush last year, except that new provisions facilitating comparable worth lawsuits have been added and the law governing corporate affirmative action programs has been further muddled, thus increasing the likelihood of reverse discrimination suits.

Current Law

Employment discrimination in the private sector is dealt with primarily by three mandates—Title VII of the Civil Rights Act, the Civil Rights Act of 1866 (42 U.S.C.S. 1981), and Executive Order 11246.

Title VII prohibits discrimination based on race, sex, national origin, and religion. Title VII covers employers of 15 or more employees.

Section 1981 prohibits discrimination based on race and national origin. Section 1981 covers all employers regardless of size.

Executive Order 11246 is the affirmative action requirement for government contractors. It covers any company selling goods or services to the federal government (a universe of more than 56,000 companies employing more than 23.5 million workers). Contractors must conduct statistical analyses of each job group within their workforces to determine whether minorities or women are underutilized within a particular job group. The term "underutilized" means too few minorities or women are employed in a job group as compared with their representation in the relevant labor market. If underutilization exists, then the employer must engage in affirmative action to correct the imbalance; that is, make good faith efforts to remedy the underutilization until such time as the imbalance has been corrected.

H.R.1 — Rules Committee Amendment

Disparate Impact ("Bad Numbers") Cases—Section 102 When bringing a disparate impact cases (*i.e.*, a case alleging too few members of a protected class in particular job groups as compared with their representation in the relevant labor market), current law requires plaintiffs to identify a particular practice or practices as the cause of the disparity.

H.R. 1 eliminates this requirement, allowing plaintiffs to allege that all of a company's practices caused the disparity and forcing company to prove a negative—that none of its practices discriminate. While reworded and reshuffled, this section is essentially the same as the original H.R. 1.

Business Necessity Defense—Section 101 While proponents continue claiming their intent is to restore Title VII's business necessity defense to the *Griggs* standard, this revision once again fails to use the *Griggs* holding. The new language is not found in prior Supreme Court disparate impact cases. It would make an employer's burden in defending a bad numbers case extremely hard to carry.

Affirmative Action—Sections 103 and 111 H.R. 1 prohibits employers from making any employment decision in which race or sex is a "motivating factor," but H.R. 1 is to be construed to approve the "lawfulness of voluntary or court-ordered affirmative action." Left unclear is whether affirmative action required by Executive Order 11246 would be protected. No mention of the relationship between the Executive Order program and the proposed Title VII amendments is made in either H.R. 1 or the committee reports.

Punitive and Compensatory Damages—Section 106 H.R. 1 authorizes juries to award both punitive and compensatory damages. No cap is placed on compensatory damages (*i.e.*, damages for "pain and suffering"). Punitive damages would be limited to \$150,000, or the sum of compensatory damages plus back pay, whichever is greater. In all likelihood, therefore, damages would be at least \$150,000, not capped at \$150,000. These heavy damages would be available in routine individual cases as well as class action (*i.e.* pattern or practice) statistical cases.

Statistical Reports—Sections 203 and 204 The Labor Department would be required to make an annual report to Congress that includes a summary and analysis of affirmative action reports and an analysis of employment opportunities and wage differentials by sex, race, national origin and ethnicity (but not religion) occurring within each job title within job groups within occupations within industries. EEOC would be required to include in its annual report a summary and analysis of data submitted by employers concerning employment opportunities by sex, race, national origin and ethnicity within industries and occupational groups.

Quotas Not "Permitted"/Unlawful—Section 111 H.R. 1's changes in job bias law would dramatically increase employer liability to "bad numbers" cases. To protect against these lawsuits, H.R. 1 tacitly encourages employers to make sure their numbers mirror the surrounding population. The Rules Committee draft, however, provides that any employer who uses quotas to improve its numbers in this manner will be held guilty of discrimination.

Adjustment of Test Scores—Sections 115 and 116 To address the public concern over the adjustment of test scores based on the test takers' protected class (*i.e.*, race norming), H.R. 1 bars an employment test from being used unless it "validly and fairly predicts" the

ability of the test taker to perform the job. The term "fair," one of the more subjective concepts in the English language, is not defined in H.R. 1. Also, employers would have to hire industrial psychologists to run expensive validation studies before using a test, thus making the use of tests extremely expensive.

Comparable Worth—Sections 202 and 203 The Labor Department would be required to perform studies of employers to identify and eliminate discriminatory wage disparities. The new language provides that wage rates should be based on "work performed and other appropriate factors." As defined in the bill, none of the factors include the labor market. Under current law, employers may rely on the labor market to establish pay differentials for different jobs. These studies could be used to create an inference of comparable worth discrimination for litigation under H.R. 1's new disparate impact provisions.

Overseas Application of Civil Rights Laws—Section 119 This new section applies Title VII to U.S. citizens when they work overseas for an employer controlled by a U.S. company. The bill reverses the Supreme Court's 1991 decision in *Aramco Services v. Boureslan*. No hearings have been held on the amendment.

Glass Ceiling Commission—Title II A commission would be established to study and prepare recommendations eliminating barriers to the advancement of women and minorities to senior decisionmaking positions in business.

Attorney Fees — Section 107 Under H.R. 1, in settling a Title VII lawsuit, the waiver of attorney's fees cannot be compelled, but fees can be waived voluntarily. Litigation will be needed to determine the difference between a "compelled" and "voluntary" waiver. Also, as a general matter, the employer will have to pay the attorney fees incurred by the plaintiff in defending a settlement against a third-party challenge.

Retroactivity — Section 113 For sections reversing a Supreme Court decision, the bill applies to all proceedings pending on or begun after the date of the decision. Inconsistent court orders can be vacated. The damages and attorney fee provisions apply to all proceedings pending on or begun after the date of enactment.

"NEW" VERSION OF H.R. 1

The Compromise That Isn't

1. Quotas in Hiring and Promotion Will Still Be Encouraged

- * Main Street businesses will still face the prospect of jury trials and hundreds of thousands of dollars in damage awards if they do not hire by the numbers. These remedies were debated and rejected in passing the 1964 Civil Rights Act.
- * The quotas prohibition in the bill is like putting a "red" label on a blue car -- the car is still blue. This language will not prevent employers from defensive hiring because they still face a nearly impossible defense and exorbitant legal costs. In addition, it will put employers in a no-win situation; they are liable if their hiring decisions do not reflect "the numbers" and liable if they do hire by the numbers to avoid costly lawsuits and potential liability.

2. Phony Punitive Damages "Cap" Will Still Lead to Outrageous Jury Awards

- * The punitive damages "cap" is \$150,000 or an amount equal to compensatory damages plus equitable relief (back pay, etc.), "whichever is greater". This is obviously a phony cap, written to be easily evaded. The bill still allows unlimited compensatory damages (including pain and suffering). This is the same language that appeared in last year's legislation.

3. Business Necessity Definition Sets a New Standard for Courts to Interpret

- * New language creates a new standard for "business necessity" which will be time consuming and costly for the courts to interpret and evaluate.
- * The definition of business necessity as "substantial and manifest relationship to the requirements for effective job performance" does not codify Griggs, despite claims of proponents. Griggs states that business necessity can be proven by demonstrating that "any given requirement [has] a manifest relationship to the employment in question." It is simply another combination of subjective and legally unprecedented terms which, combined with the linkage to job performance, results in a nearly impossible standard of proof for employers to meet.
- * The new language of "effective job performance" unfairly restricts the range of factors small business may use in evaluating whether to hire, promote or retain an employee.

4. Disparate Impact Language Does Not Require a Plaintiff to Show Which Practice is Discriminatory

- * The disparate impact language specifying that plaintiffs must challenge specific practices when possible still puts an employer in the position of having to defend a group of employment practices as non-discriminatory, an extremely difficult and restrictive procedure. The new language does little to ease this burden of proof. The language simply allows a claimant to narrow his or her group of challenged practices, but does not require them to specify which of the practices caused disparate impact.

5. Relative Qualifications Amendment is Meaningless Because of H.R. 1's Legal Framework

- * The relative qualifications amendment stipulating that an employer may rely on qualifications in employment decisions is virtually meaningless. Given the legal framework established by this bill, this language provides no legal defense. Even if an employer can prove he or she relied on such qualifications for the employment decision, they must still face the nearly impossible business necessity defense.

6. "Mixed Motive" Language Worse for Main Street Business Than Last Year's Bill

- * Mixed motive cases are changed to establish a cause of action if race, color, sex, religion or national origin are found to be "a motivating factor" in the employment decision. Unless the law specifically states that discrimination was the motivating factor, "motivating" and "contributing" are virtually interchangeable. Further, the bill passed by the House last year permitted employers who successfully defended themselves in a mixed motive case to be limited to traditional Title VII remedies, not unlimited damages. The "compromise" does not include this provision.

7. Settlements Still Held Hostage by Attorneys' Fees Provisions

- * The new attorney's fees provision "allows" waiver of attorneys' fees as part of settlement. However, this language still permits attorneys to hold hostage a settlement until his or her fees are paid. This is yet another indication of the true benefactors of this bill -- trial lawyers.

8. Statute of Limitations Increased Significantly From Current Law

- * The statute of limitations is "lowered" from 2 years to 18 months. In current law the period is 180 days, thus the "compromise" only triples the statute of limitations, instead of quadrupling it.

9. Retroactivity Provision Hollow for Small Business

- * The new version limits retroactivity to those cases which have not been finally adjudicated. Short of Supreme Court consideration no case has been "finally adjudicated", and could be affected by this bill. The practical result of this new language is that no case currently under consideration will be excluded from coverage, even those already decided in lower courts. Attorneys will have even greater incentive to file appeals.
- * Retroactivity in this type of bill is unfair to small business owners. Essentially, it is changing the rules of the game. Small businesses comply with the law in existence at the time, and do not retain permanent counsel or keep extensive records for long periods of time.

10. Comparable Worth Language Makes H.R. 1 Worse than Last Year's Bill

- * The "comparable worth" language in this version of H.R. 1 was not in the bill passed by the House last year or the Conference Report. No hearings were held by the committee of jurisdiction; all previous attempts to enact comparable worth legislation have been rebuffed. Similarly, the courts have rejected the concept of comparable worth.
- * This controversial language (Section 202) injects a non-traditional element into civil rights law. No previous civil rights law has included this issue. The substitute calls for a new program under the Department of Labor to establish "pay equity" across all sectors of industry. Economists argue that attempts to impose wage guidelines or wage controls throughout American business through "comparable worth" would be costly and undermine efficient allocation of resources.

For more information, please contact the NFIB at 202/554-9000



Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, MAY 22, 1991

AG
202-514-2007
(TDD) 202-514-1888

Attorney General Dick Thornburgh issued the following statement regarding the so-called "compromise" proposal on civil rights announced in the House of Representatives.

"Last year President Bush expressed a strong desire to sign civil rights legislation which would help make the American workplace a level playing field for all Americans. But as he indicated in his Rose Garden Address regarding civil rights on May 17, 1990, he will not sign any bill which would force employers to hire by the numbers. He will not sign a quota bill. He will also not sign a bill with provisions which will serve mainly to line lawyers' pockets. Nothing has changed. The President will veto any legislation which has undergone only cosmetic changes and which still forces quotas and seeks to boost lawyers' fees.

"Instead of removing from the bill the provisions that would cause employers to resort to quotas, all the proponents of the so-called 'compromise' seem to intend, is to move words around and say that quotas are not allowed by the bill. That doesn't solve the quota problem. H.R. 1 remains a quota bill and a lawyer's bonanza, virtually no different from the bill the President vetoed last year. He will not sign it. Those who are interested in true civil rights legislation should support the President's bill, H.R. 1375.

#



LAWTON CHILES
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

FLORIDA GOVERNOR LAWTON CHILES VETOES CIVIL RIGHTS BILL

May 24, 1991

The Florida State Legislature passed a civil rights bill and sent it to Governor Chiles for his signature. After careful review, Governor Chiles vetoed this civil rights bill and issued these comments in an accompanying statement with his veto message:

- "My decision to veto Senate Bill 174 today is based upon reality not perception. The reality is that this is a bad bill. It is vague and imprecise."
- "Senate Bill 174 creates a civil cause of action with a **right to a jury trial with actual and punitive damages and attorney's fees** for a violation of unspecified statutes involving unlawful discrimination."
- "The greatest threat to the civil rights reform movement are laws that mislead the public by raising their expectations, only to discover that the greatest beneficiaries are **the lawyers** who are involved in the process."
- "I am committed to a system for redressing unlawful discrimination that provides timely and effective remedies, **without inducing lawsuits that drag on for years** and making adversarial proceedings the preferred forum."
- "I want civil rights legislation which can stand the test of time, be **workable**, allow reconciliation and mutual respect, and which **does not provide benefits to lawyers** totally out of proportion to the benefits bestowed on their needy clients."



American Textile Manufacturers Institute, Inc.

1801 K Street, N.W., Suite 900, Washington, D.C. 20006

Tel: 202/862-0500

Fax: 202/862-0570

May 30, 1991

Dear Representative:

The American Textile Manufacturers Institute (ATMI) would like to apprise you of our continued opposition to the revised version of H.R. 1, the Civil Rights Act of 1991, which the House is expected to consider next week. We believe the changes made to the legislation do not sufficiently address our concerns and, accordingly, we urge you to vote against H.R. 1 and support a more practical alternative, such as H.R. 1375.

ATMI is the national trade association for the domestic textile industry. Our member companies operate in more than 30 states and account for approximately 75 percent of all textile fibers consumed by mills in the U.S.

Despite the changes made by the bill's sponsors, we believe H.R. 1 would still: (a) unnecessarily promote litigation rather than conciliation to resolve employer-employee disputes; (b) place a disproportionate share of the burden of proof in such disputes on the employer; and (c) effectively force employers to amend their employment policies to use quotas based on race, ethnic background or gender to deter lawsuits by employees claiming discrimination in the workplace.

The ATMI Board of Directors recently passed a resolution calling on Congress, the Administration, the business community, and the civil rights community to work together to achieve real equality of employment opportunity without leading to unnecessary litigation or the use of quotas, and we stand ready to join in this effort. However, we do not believe H.R. 1 as it is being presented to the House will further this goal.

Accordingly, we urge you to vote against H.R. 1 and, if permitted by the rule governing floor debate, we request that you vote for a more reasonable alternative which will accomplish the same objective without leading to excessive litigation or quotas, such as H.R. 1375.

Sincerely,

Neil H. Hightower
President



Position Paper

Views of Ashland Oil, Inc. on legislative and regulatory issues

ASHLAND SUPPORTS A TRUE CIVIL RIGHTS BILL - H.R. 1375

The House will soon be debating H.R. 1, "The Civil Rights Act of 1991". Ashland Oil, Inc. has very serious concerns with the Democratic substitute proposal.

We believe H.R. 1 will force Ashland and other companies to adopt quota systems in hiring practices in order to avoid the legal exposure we believe is inherent in this legislation. Although the revised H.R. 1 indicates that quotas will not be encouraged, the unfortunate reality is that H.R. 1's proposed \$150,000 punitive and unlimited compensatory damage sections may force us to defend ourselves by hiring by the numbers.

On behalf of the Bush Administration, Minority Leader Bob Michel has introduced H.R. 1375, a reasonable alternative to H.R. 1. Unlike H.R. 1, the President's proposal codifies the Griggs v. Duke Power Co. 1971 Supreme Court decision that defines "business necessity" as a "manifest relationship to the employment in question". H.R. 1375 also calls for a \$150,000 cap on damages, whereas H.R. 1 introduces jury trials and unlimited compensatory damage awards into Title VII cases for the first time.

The "new" H.R. 1 is in fact remarkably similar to H.R. 4000, legislation which was successfully vetoed by President Bush last year. Please reject any attempt to move this quota bill through the House, and support positive civil rights legislation which Ashland can and will support.

Ashland is supportive of legislation designed to resolve the real problems associated with employment discrimination in a fair and equitable manner. In this regard, we urge you to support H.R. 1375 when it comes to the House floor, and urge your strong opposition to H.R. 1 in any form.

Philip W. Block
Vice President,
Corporate Human Resources
Ashland Oil, Inc.
P. O. Box 391
Ashland, KY 41101



May 28, 1991

Dear Representative:

Associated Builders and Contractors (ABC) urges you to vote against the Leadership's substitute bill to H.R. 1. Along with the rest of the business community, ABC feels this legislation goes too far as it relates to damages and burden of proof.

This legislation and the substitute represent a massive restructuring and rewriting of our equal employment laws. The legislation in fact rejects the concept of conciliation and rapid settlement of complaints, which the Congress used as its guidepost in 1964 when Title VII was enacted and assumes that the only resolution of discrimination complaints is in protracted litigation in an already overburdened federal court system.

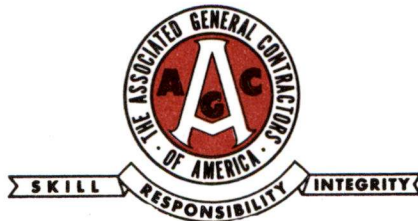
In drafting Title VII legislation, it was the considered view that discrimination issues should be settled quickly, that the employee achieve make-whole relief promptly and that the process avoid interminable delay in crowded federal courts. H.R. 1 and the Leadership's substitute would not respond to these concerns but would create new problems of vastly increased magnitude. Were this legislation enacted, any hope of conciliation and settlement through the EEOC would vanish.

H.R. 1 and the Leadership's substitute solution to accusations of discrimination will require a company to identify each and every one of its practices that are involved in hiring, promoting and its day-to-day business operation--no matter how trifling or hard to define--and then prove that none has an impact that is discriminatory, thus turning the time-honored concept of "innocent until proven guilty" on its head.

Once again, ABC urges you to vote against the Leadership's substitute to H.R. 1.

Sincerely,

Charles E. Hawkins, III, CAE
Senior Vice President



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • FAX (202) 347-4004

MARVIN M. BLACK, *President*

ROBINS H. JACKSON, *Senior Vice President*

BYRON L. FARRELL, *Vice President*

LAWRENCE J. MCGOUGH, *Treasurer*

HUBERT BEATTY, *Executive Vice President*

May 31, 1991

Dear Representative:

The Associated General Contractors of America, representing more than 33,000 firms, including 8,000 of America's leading general contracting firms, the vast majority of which are small, family-owned companies, respectfully urges you to oppose H.R.1 and the Democratic leadership so-called compromise to that bill.

The proposed changes are, at best, cosmetic in impact, and in some instances make the bill worse than last year's bill.

The compromise still provides for jury trials. By placing a cap on punitive damages of \$150,000 and allowing for that amount or for an amount equal to the award for compensatory damages, **whichever is greater**, the compromise effectively sets a \$150,000 floor on awards.

This extreme penalty provision will serve as a cudgel to employers forcing them to covertly engage in preferential hiring quotas to achieve statistical balance in the workforce, in the effort to avoid costly litigation and possible monetary penalties for damages. With the new language banning hiring by quota, the employer will also face the potential of reverse discrimination lawsuits if it is believed that preferential hiring and promotional decisions have been utilized.

Rather than clarifying enforcement of the nation's civil rights laws, H.R.1 and the proposed compromise, will lead to increased polarization in the workplace, increased litigation as employers will be forced to defend any or all factors used in making hiring and promotion decisions, and greatly increase the time needed to resolve disputes.

Rather than moving us toward a one-nation America, H.R.1 and the compromise will serve to further fracture the many and diverse peoples in this country.

The AGC urges your vote against H.R. 1 and the so-called compromise.

Sincerely,


Susan J. Loomis
Executive Director
Congressional Relations

Drew Lewis
Chairman

James T. Lynn
Cochairman

James D. Robinson III
Cochairman

New York
230 Park Avenue
New York, New York 10168
(212) 682-6370 FAX (212) 682-0194

William L. Lurie
President

Richard W. Anthony
Executive Director-Public Information

Richard F. Kibben
Executive Director-Construction

Washington
1615 L Street, N.W.
Washington, D.C. 20036
(202) 872-1280 FAX (202) 458-3508

Samuel L. Maury
Executive Director

May 17, 1991

The Honorable Neil Abercrombie
United States House of Representatives
Washington, DC 20515

RE: Civil Rights Legislation

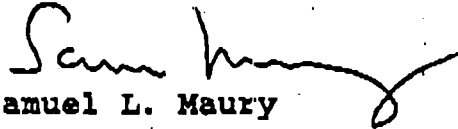
Dear Representative Abercrombie:

I understand various documents representing potential agreements between civil rights groups and the business community are being circulated on the Hill. To the extent that these documents are perceived to reflect the outcome of recent discussions between The Business Roundtable and civil rights groups, we would emphasize that no definitive conclusions were reached in the discussions.

We expect that there will be other such documents, and we do not intend to comment on the specifics of each document other than to reiterate a fundamental point. We agreed with the civil rights groups that a basic understanding had to be reached on all issues before we could proceed with any specific issues. We did not reach a basic understanding on all of the issues, and, because the issues are so interrelated, we cannot support piecemeal amendments to the bill.

We continue to believe the best way to lead to resolution of the difficult issues involved in this legislation would be passage by the House of H.R. 1375 as an alternative to H.R. 1.

Sincerely,


Samuel L. Maury



HR-1 - NOT A CIVIL RIGHTS BILL

Business Roundtable opposition to HR-1 is based on the following concerns:

- o HR-1 professes to overrule Wards Cove v. Atonio and restore Griggs v. Duke Power Co. but goes much further than restoration of Griggs:

- o Creates a technically impossible burden for employers to prove business necessity - result will be numerical hiring (quotas) to avoid disparate impact;

- o Permits grouping of practices without requiring plaintiff to identify practice which caused impact - Would permit wide-ranging class action lawsuits based on numerical deficiencies;

- o Employers would have to prove each practice is required by business necessity - Would drive employers to adopt numerical balance as workplace goal;

- o Employers would be forced to defend employment practices on the basis of minimal qualifications and efforts to upgrade workforce would be legally and unduly restricted;

- o Imposes absolute liability in mixed motive cases;

- o Creates a tort system of unlimited compensatory and punitive damages with jury trials. Makes Title VII a litigation engine and workplace a prelude to courtroom. Impact on employers of all sizes would be devastating;

- o Permits plaintiff's attorneys to hold any possible settlement of a case hostage to excessive attorney's fees;

- o Extends statute of limitations in employment cases four-fold;

- o Revives continuing violation theory first rejected by Supreme Court in 1976;

- o Reopens cases retroactively, and also applies new requirements and damages to pending cases.



FINANCIAL EXECUTIVES
INSTITUTE

1100 Seventeenth Street, N.W.
Suite 1203
Washington, D.C. 20036
(202) 659-3700

May 29, 1991

TO: MEMBERS OF CONGRESS
RE: VOTE YES ON H.R. 1375

The purpose of this memorandum is to further express the strong support of the Financial Executives Institute's Committee on Government Liaison to President Bush's civil rights proposal, H.R. 1375. We are equally opposed to the revised proposals contained in H.R. 1. We encourage you to **VOTE NO TO H.R. 1 and YES TO H.R. 1375.**

Although we appreciate the recent attempts by House majority leaders to remedy the problems identified with H.R. 1, we do not believe that the current proposal pending before the House goes far enough to prevent employers from being forced to adopt employment quotas. Employers will now be faced with exorbitant lawsuits if they don't hire by quotas and face penalties if they do!

H.R. 1 still makes statistical disparities in the workforce a sufficient means to bring a lawsuit, and it still puts the burden on the accused employer to prove his innocence. In doing so, it makes employer defenses so narrow and difficult, and enormously expensive, that businesses would have no alternative but to adopt employment quotas to avoid liabilities.

Our members support language in President Bush's bill defining an employer's burden of proof in disparate impact cases and the \$150,000 cap on damages for racial and sexual harassment.

Again, we encourage you to support H.R. 1375, and reject the quota causing measures included in H.R. 1. Please contact Kevin Sabo, FEI's Manager of Government Relations, if you would like to discuss this issue further.

Sincerely,

John J. Higgins
Chairman
COMMITTEE ON GOVERNMENT LIAISON

ELECTRONIC INDUSTRIES ASSOCIATION



PETER F. McCLOSKEY
PRESIDENT

May 30, 1991

Dear Member of Congress:

On behalf of Electronic Industries Association (EIA), I am writing to alert you to the horns of a dilemma you will place business in if the latest civil rights "compromise" offered by H.R. 1's proponents is enacted.

Even though H.R. 1 does not "permit" employers to use quotas, employers are expected to hire statistically balanced workforces. Hence, employers will either violate the law when they hire by the numbers or face lawsuits, jury trials and unlimited damages. Moreover, advocates of H.R. 1 have failed to address the damages issue, capping punitive damages at \$150,000 or the amount equivalent to compensatory damages, whichever is greater.

Please oppose H.R. 1 and vote for the President's alternative, H.R. 1375. Thank you for your consideration of this important issue.

Sincerely,



FLORISTS' TRANSWORLD DELIVERY ASSOCIATION

Government Affairs Office

May 29, 1991

U.S. House of Representatives
Washington DC, 20515

Dear Representative:

The Florists' Transworld Delivery Association (FTD) is committed to the principles of equal opportunity for all Americans. FTD would support civil rights measures that truly enhance equal opportunity in a fair and equitable way. HR 1 is not such a proposal.

FTD urges you to vote against HR 1, despite publicity which states that there has been a compromise which the business community can support. The changes in the so-called compromise bill are only cosmetic. The \$150,000 cap on punitive damages does nothing to amend the problems with the bill. Compensatory damages would still be unlimited. Employers would still be forced to hire by quota to avoid costly court battles to defend their hiring and promotion practices because lawyers would still see the possibility of multimillion dollar judgements in class action suits for statistical imbalances in the workforce. Altering the definition of "business necessity", another proposed amendment, doesn't go any further toward solving the quota problem than does pretending to limit damages.

HR 1 is not a "civil rights" bill and will cause more harm than good.

Sincerely,

A handwritten signature in cursive script that reads "Elaine Acevedo".

Elaine Acevedo
Director of Government Affairs



1750 K STREET, N.W.
WASHINGTON, D.C. 20006-2394
202/452-8444
TELEX: 892722 FMI USA WSH
FAX: 202/429-4519

May 30, 1991

Dear Representative:

On behalf of the Food Marketing Institute, I urge you to vote against the so-called compromise version of H.R. 1 when it reaches the House floor.

Unfortunately, the reported compromise fails to address the inadequacies in the original legislation. The bill is still designed to promote litigation, not equal employment opportunity. Jury trials for Title VII cases will be allowed for the first time, as will punitive and emotional distress damages. The so-called cap included in the new version is a fraud because there is no cap on pain and suffering or emotional distress damages.

The food distribution industry is committed to opportunity and fairness in the workplace. H.R. 1 is still counterproductive to these goals, encouraging litigation and promoting the interests of plaintiff's lawyers rather than equal opportunity and conciliation.

FMI urges you to reject quotas, litigation and H.R. 1. Instead we ask that you support H.R. 1375. This legislation would correct flaws in recent Supreme Court decisions without encouraging quotas or creating new incentives for litigation. This approach will truly yield equal opportunity and fair employment practices.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'George R. Green', is written over a horizontal line.

George R. Green
Vice President
Assistant General Counsel

FOOD MARKETING INSTITUTE

OFFICERS AND DIRECTORS

Chairman of the Board
* E. Dean Werries
Fleming Companies, Inc.
Oklahoma City, Oklahoma

President & CEO
* Robert O. Aders
Food Marketing Institute
Washington, D.C.

Past Chairman
* Allen I. Bildner
Roseland, New Jersey

Vice Chairman, Finance
* Jack H. Brown
Stater Bros. Markets
Colton, California

Vice Chairman
* Mark C. Hollis
Publix Super Markets, Inc.
Lakeland, Florida

Vice Chairman
* David B. Jenkins
Shaw's Supermarkets, Inc.
East Bridgewater, Massachusetts

Vice Chairman
* John J. Olszeski
Hartville Foods, Inc.
Hartville, Ohio

Joseph Azzolina, Sr.
Food Circus Supermarkets, Inc.
Middletown, New Jersey

Jack W. Baker
Baker's Supermarkets, Inc.
Omaha, Nebraska

Robert E. Bartels
Martin's Super Markets, Inc.
South Bend, Indiana

James L. Baska
Associated Wholesale Grocers, Inc.
Kansas City, Kansas

Carole F. Bitter
Friedman's Supermarkets
Butler, Pennsylvania

Richard F. Bondareff
Bonfield, Inc.
Dumfries, Virginia

Donald L. Bonham
Fiesta Mart, Inc.
Houston, Texas

William J. Brodbeck
Brodbeck Enterprises, Inc.
Platteville, Wisconsin

Angelo J. Bruno
Bruno's, Inc.
Birmingham, Alabama

Charles C. Butt
H.E. Butt Grocery Company
San Antonio, Texas

* Donald D. Byerly
Byerly's, Inc.
Edina, Minnesota

Patrick W. Collins
Ralphs Grocery Company
Los Angeles, California

Steven E. Crook
Crook's Supermarket, Inc.
Nashville, Tennessee

Richard J. Currie
Loblaw Companies Limited
Toronto, Ontario, Canada

* Nicholas J. D'Agostino, Jr.
D'Agostino Supermarkets, Inc.
New Rochelle, New York

A. Dano Davis
Winn-Dixie Stores, Inc.
Jacksonville, Florida

John J. David
Davids Holdings Pty. Limited
Sydney, Australia

Henry Davis
CIFRA S.A. de C.V.
Mexico, D.F., Mexico

Charles de Cooman d'Herlinckhove
Delhaize "Le Lion," S.A.
Brussels, Belgium

Dominick DiMatteo, Jr.
Dominick's Finer Foods, Inc.
Northlake, Illinois

Alvin Dobbin
Giant Food Inc.
Washington, D.C.

Jack W. Evans, Sr.
Cullum Companies, Inc.
Dallas, Texas

Pierre J. Everaert
Koninklijke Ahold N.V.
Zaandam, The Netherlands

Lyle Everingham
The Kroger Co.
Cincinnati, Ohio

□ Louis Fox
Associated Wholesale Grocers, Inc.
Kansas City, Kansas

Jack Futterman
Supermarkets General Corporation
Woodbridge, New Jersey

Lewis Golub
Price Chopper Supermarkets
Schenectady, New York

Richard H. Gromer
Gromer Super Market, Inc.
Elgin, Illinois

Donald E. Haggen
Haggen Inc.
Bellingham, Washington

□ Albert Heijn
Koninklijke Ahold N.V.
Zaandam, The Netherlands

Edward G. Hill, Jr.
ABCO Markets, Inc.
Phoenix, Arizona

Gary D. Hirsch
The Penn Traffic Company
New York, New York

Earl D. Holton
Meijer, Inc.
Grand Rapids, Michigan

Thomas P. Infusino
Wakefern Food Corporation
Elizabeth, New Jersey

Wallace D. Iott
Seaway Food Town, Inc.
Maumee, Ohio

Charlean Keller
Kons IGA
Billings, Montana

Roy J. Kerscher
Food World, Inc.
Columbus, Ohio

Albert E. Lees, Jr.
Lees Supermarket
Westport, Massachusetts

Broadus R. Littlejohn, Jr.
Community Cash Stores
Spartanburg, South Carolina

William R. MacAloney
Jax Markets
Anaheim, California

Kenneth W. Macey
Macey's, Inc.
Salt Lake City, Utah

Peter A. Magowan
Safeway Inc.
Oakland, California

Don E. Marsh
Marsh Supermarkets, Inc.
Yorktown, Indiana

Norman C. Mayne
Dorothy Lane Market, Inc.
Dayton, Ohio

Warren E. McCain
Albertson's, Inc.
Boise, Idaho

Larry H. McKinney
Larry's Markets, Inc.
Seattle, Washington

Fred B. McLaren
Hughes Markets, Inc.
Los Angeles, California

□ Frederik G.H. Meijer
Meijer, Inc.
Grand Rapids, Michigan

Jerry D. Metcalf
Scrivner, Inc.
Oklahoma City, Oklahoma

James L. Moody, Jr.
Hannafor Bros. Co.
Portland, Maine

David W. Morrow
Pueblo International, Inc.
San Juan, Puerto Rico

* Richard H. Niemann, Sr.
Niemann Foods, Inc.
Quincy, Illinois

□ Kenneth O. Olsen
The Vons Companies, Inc.
Los Angeles, California

Robert R. Onstead
Randall's Food Markets, Inc.
Houston, Texas

Ronald D. Pearson
Hy-Vee Food Stores, Inc.
Chariton, Iowa

□ Glenn J. Queen
Huntington, West Virginia

Feargal Quinn
Superquinn Ltd.
Dublin, Ireland

Ronald F. Randall
Randall Stores, Inc.
Mitchell, South Dakota

Lawrence A. Rothwell
Pennington Supermarkets
Pennington, New Jersey

Joseph M. Sanchez, Jr.
Civic Center Food Markets, Inc.
Los Angeles, California

Lewis G. Schaeneman, Jr.
The Stop & Shop Companies, Inc.
Boston, Massachusetts

Craig D. Schnuck
Schnuck Markets, Inc.
St. Louis, Missouri

□ Ben Schwartz
Los Angeles, California

John F. Schwegmann
Schwegmann Giant Super Markets
New Orleans, Louisiana

Jonathan L. Scott
American Stores Company
Salt Lake City, Utah

David F. Sobey
Sobeys, Inc.
Stellarton, Nova Scotia, Canada

Christy Spoa
Christy's Market
Ellwood City, Pennsylvania

* Roger E. Stangeland
The Vons Companies, Inc.
Los Angeles, California

Frederick M. Stevens
Fred Meyer, Inc.
Portland, Oregon

* John C. Todd
Todd's Supermarkets
Greeley, Colorado

Jack Twyman
Super Food Services, Inc.
Dayton, Ohio

Eugene Walters
Marketplace Foods, Inc.
Norfolk, Virginia

Daniel R. Wegman
Wegmans Food Markets, Inc.
Rochester, New York

* Ted C. Wetterau
Wetterau Incorporated
Hazelwood, Missouri

George R. Wong
Bel Air Markets
Sacramento, California

* James Wood
The Great Atlantic & Pacific
Tea Company, Inc.
Montvale, New Jersey

* Michael W. Wright
Super Valu Stores, Inc.
Minneapolis, Minnesota

* Executive Committee □ Ex Officio Director

HONORARY BOARD MEMBERS

Byron Allumbaugh
Ralphs Grocery Company
Los Angeles, California

Gordon F. Bloom
Metropolitan Markets, Inc.
Newton, Massachusetts

Jack J. Crocker
Super Valu Stores, Inc.
Thermal, California

Stephen J. D'Agostino
Greenwich, Connecticut

A. D. Davis
Winn-Dixie Stores, Inc.
Jacksonville, Florida

Claude W. Edwards
South Laguna, California

Grant C. Gentry
Park Ridge, Illinois

Richard D. Harrison
Fleming Companies, Inc.
Oklahoma City, Oklahoma

George W. Jenkins
Publix Super Markets, Inc.
Lakeland, Florida

Irving W. Rabb
Cambridge, Massachusetts

Donald O. Schnuck
Schnuck Markets, Inc.
St. Louis, Missouri

Richard Waxenberg
Bay Harbor Islands, Florida

Robert B. Wegman
Wegmans Food Markets, Inc.
Rochester, New York

EXECUTIVE STAFF

Robert O. Aders
President
Chief Executive Officer

Charles W. Bray
Senior Vice President
Administration and Finance

Timothy M. Hammonds
Senior Vice President
Research and Education

William S. Kies, Jr.
Senior Vice President
Marketing and Field Services

Curt Kornblau
Senior Vice President
Strategic Planning and Secretary

Harry Sullivan
Senior Vice President
Public Affairs and
General Counsel

Richard J. Bodamer
Vice President
Member and Trade Relations

Karen H. Brown
Vice President
Communications

John W. Farquhar
Vice President
Scientific and
Technical Services

Dagmar T. Farr
Vice President
Consumer Affairs

George R. Green
Vice President
Assistant General Counsel

Judith A. Kozacik
Vice President
Research

Charles I. Miller
Vice President
Loss Prevention Services

Stephen M. Perry
Vice President
Education

Brian E. Tully
Vice President
Conventions and Meeting Services



FRANK J. LEWIS
SENIOR VICE PRESIDENT—SPECIAL ASSISTANT
TO THE CHAIRMAN AND CHIEF EXECUTIVE OFFICER

May 30, 1991

Dear Representative:

Recent press announcements have indicated that a "compromise" civil rights bill has been drafted and will be offered by Chairman Brooks and Representative Fish. Unfortunately, the proposal is even worse than the bill vetoed last year by the President. In those areas where "concessions" have been made, the changes are superficial.

The "compromise" that has been brought forth is empty and the changes are cosmetic:

1. A \$150,000 dollar cap on punitive damages is meaningless if compensatory damages (pain and suffering) are unlimited. Especially since the illusory cap can be increased if compensatory damages are higher than \$150,000.
2. Also, under the alternative, companies would have to use quotas to protect themselves from devastating litigation, however, it would be illegal to do so since quotas are banned.
3. Comparable worth provisions have been included in the bill.

If Congress is serious about passing legislation, then they should remove the politics from the situation and vote for the substantive equality bill, H.R. 1375.

Sincerely,

A handwritten signature in cursive script, appearing to read 'F. Lewis'.

HARRIS CORPORATION

Washington Office: 1201 East Abingdon Drive, Alexandria, VA 22314
Melbourne Office: 1025 West NASA Boulevard, Melbourne, FL 32919

Telephone: 703/548-9200
Telephone: 407/727-9370

May 23, 1991

Dear Representative:

The International Mass Retail Association (IMRA), on behalf of the nation's price-competitive stores, strongly supports fair employment opportunities for all Americans. We could not support the original version of H.R. 1, the "Civil Rights Act of 1991," however. Having reviewed all the available information on the latest revision of H.R. 1, IMRA strongly believes that the bill's many serious problems have not been remedied. Not only does the bill very closely resemble the bill vetoed last year, but in some aspects the revised H.R. 1 may even be worse than last year's bill.

While backers of the bill are trying to portray the revision as a "compromise" that should satisfy the objections that IMRA and other business groups have raised, the revised H.R. 1 is still completely unacceptable to us. In summary, here are IMRA's main objections:

- o **Still A Quota Bill.** Saying that these changes mean that H.R. 1 is no longer a quota bill doesn't make that so. The changes made appear to be cosmetic, not real. H.R. 1 will still promote lawsuits, create heavy new penalties and place employers at an unfair disadvantage. That's what will produce pressures for quotas.
- o **Not a Real "Compromise."** The changes do not solve many of the objections raised so far. Business groups have not even been shown the supposed "compromise" language before it was announced, much less endorsed it. What kind of compromise is that?
- o **Problems Not Addressed.** The revised version of H.R. 1 does not even address some of the bill's main problems (such as automatic jury trials, dropping the current law's requirement that complaints first be screened and conciliated by EEOC).
- o **Not the Griggs Standard.** The revised bill marks just the latest refusal to adopt the "business necessity" defense from the Supreme Court's unanimous 1971 Griggs case. The revised H.R. 1 still would require employers to prove more than a sound business reason for job standards; they would also have the far more complex and expensive burden of proving standards are required for "effective job performance."
- o **"Anti-Quota" -- No Help.** The supposedly "anti-quota" provisions added to H.R. 1

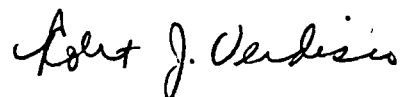
confuse the issue without resolving it. Far from meeting employers' concerns, this change could even leave employers more vulnerable to being hit from both sides at the same time: the bill retains its heavy pressure on employers to adopt informal quotas in self-defense, while the new "anti-quota" provision -- if it has any meaning at all -- could increase the jeopardy of "reverse discrimination" lawsuits from non-minority workers.

- o **No Real Damages "Cap."** The so-called "cap" on damages is meaningless. It creates a \$150,000 floor on punitive damages, but does not in any way limit compensatory damages -- which the bill would allow to include such new tort-like elements as "pain and suffering," and "mental anguish." This is identical to the unacceptable provision in the bill vetoed last year.
- o **New Attack on Testing?** An apparent attempt in the "compromise" bill to defuse the issue of "race-norming" (that is, adjusting test scores by race) seems to open all job testing to new attack.
- o **Changes for the Worse.** In some areas, the so-called "compromise" H.R. 1 is actually worse than the bill vetoed last year. Examples: its provisions on "mixed motive" cases; "reverse discrimination" suits; and making a company that settles a lawsuit liable for paying legal fees for an unrelated third party that later files, or intervenes in, a challenge to the settlement.

IMRA believes that it's very strange that a supposedly "compromise" bill can be highly publicized in press conferences, speeches and press releases, but cannot be produced so that its actual language can be examined, nor is it apparent exactly who is supposed to have "compromised" with whom. Clearly the American businesses that will have to live with this bill if Congress is unwise enough to enact it have not had the opportunity to examine its language.

The revised version of H.R. 1 in many critical aspects also sounds suspiciously similar to last year's unacceptable -- and successfully vetoed -- bill. The little information available on other provisions strongly suggests that the changes made are not for the better. From all we can tell, the latest version of H.R. 1 may be different, but it certainly isn't any better.

Sincerely,



Robert J. Verdisco
President



National-American Wholesale Grocers' Association

May 30, 1991

Dear Representative:

On behalf of the National-American Wholesale Grocers' Association (NAWGA), we urge you to oppose H.R. 1 and the so-called "leadership substitute."

Certainly, the food distribution industry supports equal employment opportunities for all Americans. However, the legislative package embodied by H.R. 1 and modified by the "leadership substitute" is an attempt to treat the symptoms of discrimination, rather than its cause. Furthermore, enactment of H.R. 1 would have a chilling effect on race relations in this country, encourage quota-based hiring, and promote litigation rather than conciliation.

The attempts by the leadership to ameliorate the onerous provisions of this legislation have failed in our view. In fact, the package being portrayed as a compromise is not.

NAWGA is committed to advancing equal opportunity employment and eradicating considerations of race, gender, and other factors from employment decisions. However, we oppose any legislation which would promote litigation and quotas rather than conciliation and equal opportunity.

Thank you for your consideration in this important issue. Please do not hesitate to contact us if we can be of any further assistance.

With kindest regards,

John R. Block
President

Bruce A. Gates
Vice President
Government Relations

The Association of Food Distributors
Educational Services Government Services

May 30, 1991

Dear Representative:

You will soon be asked to vote on H.R. 1, which will make major changes in our nation's equal employment opportunity laws. On behalf of the 40,000 companies represented by the National Association of Wholesaler-Distributors, I strongly urge you to vote against this measure.

This bill, which purports to ensure a workplace free of discrimination, will in fact result in a flurry of litigation which will only promote the cause of plaintiffs' attorneys. Instead of guaranteeing that employees will be hired and promoted according to their abilities, H.R. 1 creates a technically impossible burden for employers to prove that their hiring and promotion practices are not discriminatory. The unlimited compensatory damage awards proposed by H.R. 1 will further ensure that wholesaler-distributors and other businesses will hire "by the numbers" in order to avoid costly, unnecessary legal action.

The wholesale-distribution industry is committed to civil rights legislation which guarantees that all Americans are given an equal opportunity in hiring and promotion practices and punishes those who discriminate. In our view, H.R. 1375, which has been proposed by the President, accomplishes this goal. H.R. 1, with its quota system, unlimited liability and onerous penalties, does not.

Again, I strongly urge you to oppose H.R. 1 and support H.R. 1375 when you are called upon to vote.

Sincerely,



Alan M. Kranowitz
Senior Vice President-Government Relations



National Federation of
Independent Business

May 30, 1991

H.R. 1 -- THE COMPROMISE THAT ISN'T

Dear Member of Congress:

On behalf of the over 500,000 small business members of the National Federation of Independent Business (NFIB) I urge you to reject H.R. 1, the Brooks substitute.

Despite claims by proponents, these modifications do not represent "agreements" by the business community, nor are they supported by small business. The changes made to H.R. 1 are cosmetic only -- they do not even begin to address small business' substantive concerns with the bill. The business necessity amendment does not codify the Griggs decision, nor is it a real compromise. Similarly, half hearted attempts such as "qualifications" amendments, limiting retroactivity and "lowering" the statute of limitations only make minor changes to the bill.

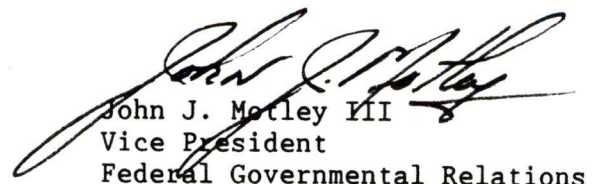
Most importantly, the biggest concern of Main Street small business -- damages -- remains virtually untouched. A \$150,000 cap on punitive damages only addresses half of the remedies scheme. H.R. 1 still allows jury trials and unlimited compensatory damages. In fact, the bill allows punitive damages of \$150,000 or an amount equal to compensatory damages plus back pay, whichever is greater.

In addition to these issues, an employer will be hit with huge attorney's fees, expert witness fees, statistical analysis costs, and other incidental legal fees associated with cases that could go on for years. Small firms simply cannot afford this bill.

The changes made to H.R. 1 are merely tinkering around the edges and will not solve small business' problems with this legislation. Employers will use defensive hiring (quotas) to avoid protracted legal battles and huge damage awards. We urge you to say no to quotas and huge lawsuit awards and vote against H.R. 1.

Suite 700
600 Maryland Ave. S.W.
Washington, DC 20024
(202) 554-9000
Fax (202) 554-0496

Sincerely,


John J. Motley III
Vice President
Federal Governmental Relations



The Guardian of
Small Business



National Stone Association

1415 Elliot Place, N.W. • Washington, D.C. 20007-2599 • 202/342-1100

May 24, 1991

Dear Representative:

On behalf of the National Stone Association's nearly 500 member companies, I urge you to reject the so-called "Civil Rights Act," H.R. 1, when it comes to the House floor later this month. NSA understands that a substitute bill, containing language purporting to outlaw quotas and place a cap on punitive damages, will be offered. While supporters of the substitute have advertised it as "acceptable" to business, it is not. NSA recommends that you reject the substitute measure as well.

The substitute measure makes only cosmetic changes to bad legislation and is still a quota bill. The "cap" on punitive damages of \$150,000 or an amount equal to compensatory damages, if greater, will still prove devastating to the small business community. About 75 percent of all crushed stone operations in the United States have fewer than 20 employees and this type of jury-decided award would be sufficient to put such an operation out of business.

Even if this type of cap on damages is included in the bill, employers would still be inclined to "hire by the numbers" to defend themselves against frivolous lawsuits based on the alleged disparate impact of a group of employment or hiring practices. Inclusion of language banning hiring by quota may place an employer in the "Catch-22" situation of being sued for reverse discrimination if statistics indicate that minorities have been favored in hiring and promotional decisions.

There is a true civil rights bill that NSA strongly supports: H.R. 1375. This measure contains all the legitimate provisions of H.R. 1 but eliminates the pro-quota aspects that improve the employment opportunities of no one but lawyers. To genuinely advance civil rights, vote "NO" on H.R. 1 and the substitute measure and support H.R. 1375.

Sincerely,

A handwritten signature in dark ink, reading "William D. Kelleher". The signature is fluid and cursive, with the first name "William" and last name "Kelleher" clearly legible.

William D. Kelleher
Vice President, Government Affairs



Washington Office
206 E Street, N.E.
Washington, DC 20002
(202) 546-7584
FAX: (202) 546-9289

May 30, 1991

Dear Member of Congress:

The National Roofing Contractors Association (NRCA) is opposed to the new H.R. 1 "substitute." The full text has just been made available and it does not cure the bill's quota problem. In fact, the "substitute" expands an employer's legal exposure on the issue of quotas.

It mandates de facto quotas by guaranteeing lawsuits for failing to hire by the numbers, but forbids quotas. Employers will be sued no matter what they do.

The "substitute" does nothing to relieve the outrageous remedies in H.R. 1, either. The \$150,000 "cap" on punitive damages is actually a floor and does not limit compensatory damages. The "cap" will not curb an avalanche of lawsuits, since the "substitute" still calls for jury trials and places an impossible burden of defense on employers.

The locality, type of work, and seasonality of the construction industry limits a roofing contractor's hiring options. In many areas of the country there is a severe shortage of skilled construction workers. A roofing contractor will hire on the basis of workforce availability, and union contractors must often rely on a workforce that comes from a hiring hall. In both instances, to presume employers guilty of discrimination, when they have very little control over the makeup of their workforce, is patently unfair.

NRCA was founded in 1886 and currently has over 3,400 members represented in all 50 states. NRCA supports equal opportunity but opposes the unwarranted and unworkable changes to employment law as proposed in the H.R. 1 "substitute." We urge you to vote "NO" on the H.R. 1 "substitute" and to support the administration's civil rights bill, H.R. 1375.

Sincerely,

A handwritten signature in dark ink, appearing to read "Craig S. Brightup".
Craig S. Brightup
Director of Government Relations



May 29, 1991

U.S. House of Representatives
Washington, DC 20515

Dear Member of Congress:

The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), representing more than 5,000 contractor firms, supports equal opportunity employment, but opposes quotas and other inequitable government limits to management's employment discretion. Employment opportunities should be awarded based on reasonable and nondiscriminatory merit-based factors, not government mandated quotas. The so called "compromise" version of the Civil Rights Act of 1991 (HR 1) is inconsistent with the concept of equal opportunity employment.

SMACNA opposes the "product" of the latest efforts to revise the misnamed and misdirected Civil Rights Act of 1991. HR 1 seeks to overturn or modify numerous U.S. Supreme Court decisions and contains many objectionable provisions. For example Section 4 would in effect, coerce quota hiring by employers to achieve proportionality in the workforce. Section 8 would encourage an explosion in jury trials to recover unlimited compensatory and punitive damages under Title VII of the Civil Rights Act.

Overall, the so-called "compromise" Civil Rights Act of 1991 continues to presume employer guilt until proven innocent with the burden of proof remaining on the employer. Section 8 of H.R. 1 would create an unprecedented expansion of frivolous litigation without real overall damage limits.

In that regard, the National Foundation for the Study of Employment Policy has released a study specifying the private and public sector costs of providing compensatory and punitive damages under Title VII, as conservatively exceeding \$5.5 billion annually. The average cost for employers to litigate discrimination suits is approximately \$100,000 to \$150,000 and is often far more. Under HR 1 the employee would not be required to pay the courts costs or attorney's fees while the Equal Employment Opportunity Commission (EEOC) handles the allegation. Based on the potential for increased liability, especially to class action litigation, most employers will be forced to defensively hire a quota based workforce to avoid unjust prosecution and potential financial ruin.

The latest version of HR 1 also provides for what would in effect be the elimination of valid employment tests. Although masked in terms such as "prohibition to adjustments to employment test scores" and "valid" and "fair", employers or training programs using valid, proven tests would be ill advised to continue the practice. What are the definitions of "valid" and "fair"? Who would define those terms?

SMACNA suggests that Congress focus on the more fundamental and alarming workforce problem facing our nation and most industries-creating an adequate and trained workforce by the year 2000. We find it ironic that Congress should now be concentrating on this type of coercive quota legislation when employers faced with forecasted employee shortages have every economic reason to actively recruit and promote minorities and females.

Once again, SMACNA urges your support for the nation's small business community - vote no on HR 1.

Sincerely,

Robert L. Lautenbach
President, SMACNA

SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.
HEADQUARTERS: 4201 LAFAYETTE CENTER DRIVE • CHANTILLY, VIRGINIA 22021-1209
MAILING ADDRESS: P.O. BOX 221230 • CHANTILLY, VIRGINIA 22022-1230
PHONE (703) 803 2980 • FAX (703) 803 3732

Michael R. Losey, SPHR
President
Chief Executive Officer



May 28, 1991

Dear Member of Congress:

Recently, proponents of H.R. 1, the "Civil Rights Act of 1991", have announced that they have drafted a new, "compromise" version of the bill, which they believe resolves major issues in the bill which have been of concern to the business community. While proponents have to date refused to issue actual text of this "compromise", the outline released by the sponsors indicates that the "compromise" is, in fact, no compromise at all. On behalf of the Society for Human Resource Management, with over 40,000 members throughout the nation, I therefore urge you to oppose H.R. 1 and the reported "compromise."

According to the outline of this new version, H.R. 1 would still provide for jury trials and uncapped damages. While the bill would reportedly place a cap on punitive damages of \$150,000, it would also allow for that amount, or an amount equal to the award for compensatory, or pain and suffering, damages, whichever is greater. Since compensatory damages are uncapped, in reality the new version of H.R. 1 provides no cap on damages.

Ironically, although proponents have historically argued that the original H.R. 1 would not result in quotas, they have now claimed to have "fixed" the quota problem. However, just as the original H.R. 1 was defective, so too is the reported "compromise." Instead of adopting the language of the Supreme Court in the 1971 case of Duke Power Co. v. Griggs, which would indeed restore the definition of "business necessity" to the definition which has been in place for decades, the proponents have drafted a definition of business necessity which would place unreasonable burdens of proof on employers. As reportedly modified, H.R. 1 would still create pressure on employers to avoid litigation by adopting subtle quotas.

Finally, proponents have argued that the newly drafted version of H.R. 1 will reflect agreements reached between civil rights groups and "the business community." This is misleading, at best. As stated by Samuel Maury, Executive Director of the Business Roundtable in a May 17, 1991 letter to members of Congress, the Business Roundtable "agreed with the civil rights groups that a basic understanding had to be reached on all issues before we could proceed with any specific issues. We did not reach a basic understanding on all of the issues, and, because the issues are so interrelated, we cannot support piecemeal amendments to the bill."

We urge you to oppose H.R. 1 as drafted, and as reportedly amended, and urge you to support H.R. 1375, which would provide meaningful reform to the nation's civil rights laws.

Sincerely,

Michael R. Losey, SPHR
President and CEO



SOCIETY OF AMERICAN FLORISTS

Chairman of the Board

Donald E. Hook
Pittsburgh Cut Flower Company
Pittsburgh, Pennsylvania

President

J. Sten Crissey, AAF
Crissey Flowers & Gifts
Seattle, Washington

President-Elect

M. James Leider, AAF
Leider Horticultural Companies, Inc.
Buffalo Grove, Illinois

Treasurer

W. Claymore Sieck
Claymore C. Sieck, Inc.
Baltimore, Maryland

Executive Vice President

Betty O. Sapp, CAE

Board of Directors

Michael W. Ahern
Ahern's Inc. Florists
Akron, Ohio

Lyle Akey, AAF
Golden State Wholesale Florists
Union City, California

Thomas H. Aykens, AAF
Memorial Florists & Greenhouses, Inc.
Appleton, Wisconsin

Paul Ecke, Jr.
Paul Ecke Poinsettias
Encinitas, California

Dwight J. Larimer
DESIGN MASTER color tool, Inc.
Boulder, Colorado

Joan Watson, AAF
Sunflower Valley Wide Florists
Phoenix, Arizona

Norman T. White, AAF
White's Nursery & Greenhouses, Inc.
Chesapeake, Virginia

John R. Wilkins, AAF
Delaware Valley Wholesale Florist
Sewell, New Jersey

Chip Wright, AAF
N.H. Wright, Inc.
Cranbury, New Jersey

May 29, 1991

Dear Representative,

The Society of American Florists (SAF), the national association which represents growers, retailers and wholesalers of flowers and plants, strongly urges you to oppose HR 1.

Even with its so-called "compromises," HR 1 is still a quota bill. Employers will be forced to hire by numbers just to avoid costly litigation. In addition, the damages contained in HR 1 are of great concern to the floral industry's more than 50,000 small businesses.

Proposed changes to HR 1 are just cosmetic. The legislation is virtually the same as the Kennedy/Hawkins bill vetoed by President Bush last year. I hope that SAF can count on you to oppose HR 1.

Sincerely,

Susan M. Siemietkowski
Senior Legislative Representative

THE NEW "ANTI-QUOTA" AMENDMENT TO H.R. 1 IS ACTUALLY A PRO-QUOTA PROVISION

- o The amendment does nothing to change the other provisions in H.R. 1 that will drive employers to use surreptitious quotas and preferences.
- o The amendment does not improve current law. On the contrary, it explicitly authorizes all quotas that are "in accordance with employment discrimination law" now in place. Therefore, any judicial decision permitting quotas could provide a defense to the use of quotas under this amendment. 
- o The definition of "quota" specifically allows quotas to be used so long as jobs are filled with individuals who have the "necessary qualifications to perform the job." Therefore, an employer is specifically permitted to fill quotas with less qualified persons of a particular race, sex, or religion, so long as they are marginally qualified.

For example, suppose an employer decided he did not want more than 3% Jews working in his company. All he has to do is adopt a quota of 97% Christians. This would not be outlawed by the new amendment so long as all those he hired were minimally qualified.

- o The definition of "quota" is cleverly worded so as to make it easy to evade. Under the definition, a quota is not a quota unless the fixed number or percentage "must be attained."

Suppose, for example, that a company decides to have a quota of 50% minority hires. The company then tells its managers that if they don't meet the 50% quota for their department, the managers will not be eligible for promotions. This would not be a "quota" under the amendment since the managers are not required to adopt quotas (unless they would like to be eligible for promotions).

- o This is the first time the architects of H.R. 1 have acknowledged in public that they favor quotas. They are cynically counting on public gullibility to allow them to pass off pro-quota language as an "anti-quota" amendment.
- o **IT WON'T WORK.**

THE NEW "ANTI-QUOTA" AMENDMENT TO H.R. 1 IS ACTUALLY A PRO-QUOTA PROVISION

- o The amendment does nothing to change the other provisions in H.R. 1 that will drive employers to use surreptitious quotas and preferences.**
- o The amendment does not improve current law. On the contrary, it explicitly authorizes all quotas that are "in accordance with employment discrimination law" now in place. Therefore, any judicial decision permitting quotas could provide a defense to the use of quotas under this amendment.**
- o The definition of "quota" specifically allows quotas to be used so long as jobs are filled with individuals who have the "necessary qualifications to perform the job." Therefore, an employer is specifically permitted to fill quotas with less qualified persons of a particular race, sex, or religion, so long as they are marginally qualified.**

For example, suppose an employer decided he did not want more than 3% Jews working in his company. All he has to do is adopt a quota of 97% Christians. This would not be outlawed by the new amendment so long as all those he hired were minimally qualified.

- o The definition of "quota" is cleverly worded so as to make it easy to evade. Under the definition, a quota is not a quota unless the fixed number or percentage "must be attained."**

Suppose, for example, that a company decides to have a quota of 50% minority hires. The company then tells its managers that if they don't meet the 50% quota for their department, the managers will not be eligible for promotions. This would not be a "quota" under the amendment since the managers are not required to adopt quotas (unless they would like to be eligible for promotions).

- o This is the first time the architects of H.R. 1 have acknowledged in public that they favor quotas. They are cynically counting on public gullibility to allow them to pass off pro-quota language as an "anti-quota" amendment.**
- o IT WON'T WORK.**

THE NEW "ANTI-QUOTA" AMENDMENT TO H.R. 1 IS ACTUALLY A PRO-QUOTA PROVISION

- o The amendment does nothing to change the other provisions in H.R. 1 that will drive employers to use surreptitious quotas and preferences.
- o The amendment does not improve current law. On the contrary, it explicitly authorizes all quotas that are "in accordance with employment discrimination law" now in place. Therefore, any judicial decision permitting quotas could provide a defense to the use of quotas under this amendment.
- o The definition of "quota" specifically allows quotas to be used so long as jobs are filled with individuals who have the "necessary qualifications to perform the job." Therefore, an employer is specifically permitted to fill quotas with less qualified persons of a particular race, sex, or religion, so long as they are marginally qualified.

For example, suppose an employer decided he did not want more than 3% Jews working in his company. All he has to do is adopt a quota of 97% Christians. This would not be outlawed by the new amendment so long as all those he hired were minimally qualified.

- o The definition of "quota" is cleverly worded so as to make it easy to evade. Under the definition, a quota is not a quota unless the fixed number or percentage "must be attained."

Suppose, for example, that a company decides to have a quota of 50% minority hires. The company then tells its managers that if they don't meet the 50% quota for their department, the managers will not be eligible for promotions. This would not be a "quota" under the amendment since the managers are not required to adopt quotas (unless they would like to be eligible for promotions).

- o This is the first time the architects of H.R. 1 have acknowledged in public that they favor quotas. They are cynically counting on public gullibility to allow them to pass off pro-quota language as an "anti-quota" amendment.
- o **IT WON'T WORK.**

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Memo	From Shawn Smeallie to John Sununu Re: Senator Danforth's Civil Rights Bills (1 pp.)	5/20/91	P5	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Civil Rights (1 of 2) 1991 [6]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed: 1/3/2005	OA/ID Number: 29146-004
FOIA/SYS Case #: 1998-0004-F[2]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM: Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

THE WHITE HOUSE
WASHINGTON

AC/ER

May 30, 1991

THE CHIEF of STAFF
has seen

MEMORANDUM TO GOVERNOR SUNUNU

THROUGH: Fred McClure *fm*
FROM: Shawn Smeallie *S.S.*
SUBJECT: Senator Danforth's Civil Rights Bills

On Tuesday, Senator Danforth intends to introduce three civil rights bills. The first will address Wards Cove, the second will deal with remedies, and the third will overturn the Supreme Court decisions generally agreed to by all sides. Although there will be last minute changes to these bills, it appears that the Wards Cove bill will incorporate some of the "Sununu-Kennedy" compromise of last year. The remedies bill will likely be acceptable to us. Senator Danforth is sending you final copies of the bills tomorrow.

It is likely that Senator Rudman will join Danforth. Other moderate Republicans who supported Kennedy last year will likely sign on as well. No Democrats have signed on as of yet.

Danforth wants his bill to be perceived as the middle ground between H.R. 1 and the President's bill. If the House does not get enough votes on H.R. 1 to override the President's veto, then Danforth believes that Kennedy will have to deal with him. Staff says that Danforth will not negotiate his language with Kennedy, but will push Kennedy to accept his bill whole. If the House does achieve enough votes to override the President's veto, Danforth expects Kennedy to ignore him. If Kennedy does ignore Danforth, it is still unclear whether Danforth will vote against Kennedy on final passage.

THE WHITE HOUSE

WASHINGTON

May 21, 1991

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: C. BOYDEN GRAY *CM*

SUBJECT: New Fact Sheet on the President's Civil Rights Bill

Attached, as you requested, is a new fact sheet on the President's civil rights bill.

Attachment

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT'S CIVIL RIGHTS BILL

- o The President's bill -- H.R. 1375 -- includes all of the worthwhile measures supported by a bipartisan consensus:
 - o Overturns the Patterson and Lorange decisions.
 - o Overturns the Wards Cove decision by shifting the burden of proof to the employer in defending "business necessity."
 - o Creates new monetary remedies under Title VII with meaningful caps.
 - o Authorizes expert witness fees in civil rights cases.
 - o Extends the statute of limitations in cases involving the U.S. Government, and authorizes the award of interest against the Government.
- o Only the President's bill uses the exact language from the holding in Griggs in defining "business necessity" -- "manifest relationship to the employment in question."
- o Only the President's bill includes the exact "business necessity" language taken from the 1979 Beazer opinion, which was accepted in the Wards Cove dissent (written by the author of Beazer).
- o Any deviation from the exact language of the Supreme Court's pre-Wards Cove holdings will inevitably raise the risks for employers who do not have the "right" numbers -- years of litigation will be needed to sort out the meaning of the new definition and employers who cannot endure that litigation will have to use quotas.
- o Only the President's bill will avoid creating new pressures on employers to engage in "race norming."
- o Only the President's bill will permit the President's educational reform initiative to go forward unimpeded (see attached op-ed by Dr. Chester Finn).
- o Only the President's bill preserves the right of victims of illegal quotas to have their day in court and to be treated like other civil rights plaintiffs.
- o Only the President's bill will avoid a new litigation explosion and new attorneys fees -- a lawyers' bonanza.

Education Reform vs. Civil Rights Agendas

By Chester E. Finn Jr.

The Achilles' heel of education renewal is the lack of real-world incentives for young Americans to excel in school. Creating such incentives without triggering charges of discrimination is harder still.

Sure, it's important to get a diploma. But among those who complete high school, it matters little which courses they take, how hard they study or what grades they earn.

The reason, said the Commission on the Skills of the American Workforce in its 1990 report, is that employers have come to see the diploma as more a clue to character than to learning. "They realized long ago," the commission tartly notes, "that it is possible to graduate from high school in this country and still be functionally illiterate."

An ever growing proportion of high

Chester E. Finn Jr., professor of education at Vanderbilt University, is author of "We Must Take Charge: Our Schools and Our Future." He was an Assistant Secretary of Education during the Reagan Administration.

Tough tests will aid minority students.

school graduates now heads for college rather than the workplace. But not more than 50 U.S. campuses reject more applicants than they admit. Most of our 3,400 degree-offering institutions welcome anyone with a heartbeat and a checkbook — and the latter may be waived if you qualify for financial aid.

Open access to higher education is a prized feature of American society. But what message does it send to the 11th grader deciding whether to stay home on Tuesday night to revise his chemistry lab report or go out and party with his friends?

President Bush's new education strategy, introduced last month, would change all this. The plan, developed by Secretary of Education Lamar Alexander and a group of advisers (myself included), proposes to set world-class standards in English, math, science, history and geography, and to accompany these with new national tests that colleges and

employers will use in their admissions and hiring decisions.

When that day dawns, young people will have incentives to study. Admissions and personnel offices will confer real rewards on those who attain the new, higher standards in school and will levy unwelcome consequences on those who don't. In response, millions of students will alter their behavior. Americans, regardless of background, will take learning seriously because it will make a practical difference in their lives.

What happens in the meantime, however, if those new standards and tests yield results that differ by gender, race or ethnic group? Will any college or employer dare to use them?

Federal law already makes it difficult for employers to require any educational credentials or test scores that have a "disparate impact." Pending civil rights legislation would make this harder still. The Democrats' bill requires employers to prove that tests bear a "significant relationship to successful performance of the job." Even the Administration's milder version expects any education credentials to show a "manifest relationship" to the job.

How many personnel directors will be able to convince a Federal enforcer or judge that a young person's

command of science and geography is germane to the work of a forklift operator or receptionist? Yet so long as employers are inhibited from examining a candidate's test scores, "rational" students will see no payoff for buckling down to learn such subjects. High marks won't matter.

Colleges could easily justify stiffer academic prerequisites. But few campuses can afford to be pernickety in their admissions decisions — and virtually all are determined to enroll more minority students at any cost. Never mind that the soaring dropout rate among minority college students is a sign of the weak educational foundation that reformers hope to strengthen.

A thoroughly revamped education system would help end this paralysis. Each year we would have millions more young Americans schooled to world standards as proved by test results that are indistinguishable by race, gender or ethnicity.

Today, however, we face a Catch-22 situation in which few students are apt to change their study habits because neither employer nor colleges reward academic achievement. The President is urging them to do so. Yet any that respond may be accused of discriminating. Is that any way to reach our national education goals?

SLADE GORTON
WASHINGTON

730 HART SENATE OFFICE BUILDING
(202) 224-3441

TOLL FREE ISSUES HOTLINE
1-800-282-8095

TDD 202-224-8273

United States Senate

WASHINGTON, DC 20510-4701

COMMITTEES:

APPROPRIATIONS

COMMERCE, SCIENCE,
AND TRANSPORTATION

INDIAN AFFAIRS

INTELLIGENCE

May 23, 1991

VIA TELECOPY (456-2397)
CONFIRMATION (456-6797)

THE CHIEF of STAFF
has seen

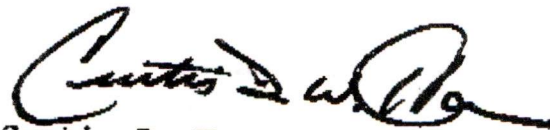
ck
The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear Governor Sununu:

Per Senator Gorton's request, I am sending to you a copy of the prepared text from which he delivered remarks late last night regarding the latest Democratic civil rights proposal.

If you have any questions, please have a member of your staff contact me at 224-3441.

Sincerely,



Curtis D. W. Hom
Legislative Assistant to
Senator Slade Gorton

Attachment

3208 JACKSON FEDERAL BUILDING
815 SECOND AVENUE
SEATTLE, WA 98174
(206) 553-0360

130 FEDERAL BUILDING
500 WEST 12TH STREET
VANCOUVER, WA 98660
(206) 696-7838

697 U.S. COURT HOUSE
W. 920 RIVERSIDE AVENUE
SPOKANE, WA 99201
(509) 353-2507

MORRIS BUILDING, ROOM 119
23 SOUTH WENATCHEE AVENUE
WENATCHEE, WA 98801
(509) 863-2118

STATEMENT OF
SENATOR SLADE GORTON
REGARDING
DEMOCRATIC
CIVIL RIGHTS PROPOSAL
May 22, 1991

On the front page of Monday's New York Times blazed the headline, "Democrats Intend to Outlaw Quotas in Civil Rights Bill." I, for one, am delighted with that turn of events. All along, I have been highly critical of any legislation that would result in quotas, or put conscious consideration of race back into Federal law.

But how will the Democrats reach that goal? Apparently not by changing the legal substance of their bill, but rather by merely including a provision that says quotas are illegal. Voila! The problem is solved.

That reminds me of the Chinese expression, "Changing bottles without changing medicine." (Huan Tang, Bu Huan Yao). It describes changes in form but not substance; inconsequential changes.

Mr. President, we have seen it all before. The Majority Party played the same game last year with a spectacular lack of success. Instead of changing the substance of the legislation, they merely tried a band-aid approach by including a statement that the legislation did not require hiring or promotion quotas.

One strategist interviewed by The New York Times stated that by including a provision outlawing quotas, Democrats could maintain that they voted to prohibit quotas, and Republicans could be attacked as voting for quotas. Nonsense!

Mr. President, I give the American public far more credit than that. They weren't fooled then and they won't be fooled now. Mere cosmetic changes do nothing. Try as they may, the Democrats cannot fool the American public by simply calling a donkey a horse.

With 12 years as the Attorney General of Washington behind me, I have carefully examined the Democratic proposals and the Supreme Court cases they have sought to modify. If any of those proposals become law, the only way a prudent employer will be able to avoid endless and successful litigation of its labor practices will be to hire and promote strictly according to the numbers, that is, to adopt quotas.

The Democratic proposals will require employers to hire so their workforces reflect the ethnic makeup of the community where the business is located. Anyone can say -- indeed the language of the bill can provide -- "This is not a quota bill." But the true test is the substance of the bill.

Senator Slade Gorton

May 22, 1991

Page 2

If you allow or encourage disgruntled employees to sue businesses when the workforce does not reflect the ethnic mix of the community, employers will make hiring decision based upon race or gender. Their workforce will have to have so many of type A and so many of type B, otherwise they will be sued and lose. Democrats can call this system anything they like, but I know that Americans of all colors understand that such a system means quotas.

It is my vision of civil rights -- and that of most Americans -- that Congress should take racial considerations out of the law, not put them back in. The Congress that can write laws to discriminate in favor of one race today also can write laws to discriminate in favor of another tomorrow. One fundamental concept -- the concept that the law should be colorblind and that all Americans should be judged based upon their talents and not upon their skin color -- is what drove Americans of all colors to support the civil rights movement in the 1960's. At that time, civil rights advocates tried to take racial considerations out of the law, but today their argument is 180 degrees to the contrary.

Today most Americans oppose the so-called "civil rights" legislation of the Democrats because it seeks to put racial considerations back into the law. Most Americans, including this Senator, believe that is wrong. It is fundamentally un-American to base hiring decisions on factors beyond ability.

For this reason, I support strong penalties for any business person who intentionally discriminates against any individual based on race. If blacks, Asians, hispanics or women are denied jobs and economic opportunities because of their race or sex, that is wrong and the offending business person should be punished. That behavior also is un-American and the law cannot be allowed to tolerate discrimination based on race.

Moreover, Mr. President, the Democrats' latest proposal presents business people with a classic Hobson's choice: If hiring does not approximate the labor pool at large, they will be sued and lose. If, on the other hand, hiring too closely approximates the labor pool at large, they also will be sued and lose. In short, they're damned if they do and they're damned if they don't.

Political cover for Democrats will come at the expense of honest employment judgments. Their proposal is a denial of civil rights, not their affirmation.

The Democrats seek to solve their problem by calling a donkey a horse. It is still a donkey.

* * * * *

Drew Lewis
Chairman

James T. Lynn
Cochairman

James D. Robinson III
Cochairman

New York
200 Park Avenue
New York, New York 10168
(212) 682-6370 FAX (212) 682-0184

William L. Lurie
President

Richard W. Anthony
Executive Director-Public Information

Richard F. Kibben
Executive Director-Construction

Washington
1615 L Street, N.W.
Washington, D.C. 20036
(202) 872-1250 FAX (202) 466-2509

Samuel L. Maury
Executive Director

May 17, 1991

The Honorable Neil Abercrombie
United States House of Representatives
Washington, DC 20515

RE: Civil Rights Legislation

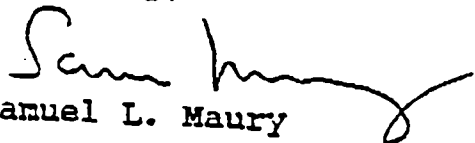
Dear Representative Abercrombie:

I understand various documents representing potential agreements between civil rights groups and the business community are being circulated on the Hill. To the extent that these documents are perceived to reflect the outcome of recent discussions between The Business Roundtable and civil rights groups, we would emphasize that no definitive conclusions were reached in the discussions.

We expect that there will be other such documents, and we do not intend to comment on the specifics of each document other than to reiterate a fundamental point. We agreed with the civil rights groups that a basic understanding had to be reached on all issues before we could proceed with any specific issues. We did not reach a basic understanding on all of the issues, and, because the issues are so interrelated, we cannot support piecemeal amendments to the bill.

We continue to believe the best way to lead to resolution of the difficult issues involved in this legislation would be passage by the House of H.R. 1375 as an alternative to H.R. 1.

Sincerely,


Samuel L. Maury

page 07
r w PM-Civil -Writethru 05-21 0588
^PM-Civil Ri -Writethru,0707<
^White House Democratic Efforts on Civil Rights Bill<
^Eds: Top 9 w with White House comment, new Foley prediction
on veto-proof majority; picks up 5th graf pvs, President Bush
vetoed.<
^By WILLIAM M. WELCH=
^Associated Press Writer=

WASHINGTON (AP) - The White House said today efforts by congressional Democrats to soften their civil rights legislation doesn't alter President Bush's belief that the bill would prompt employers to use quotas in hiring.

White House spokesman Roman Popadiuk said the Bush administration continues to support its own less-sweeping civil rights bill despite changes Democrats have made in their measure. House leaders say they expect the full House to vote on civil rights bills late next week.

House Speaker Tom Foley said he expects the House to pass the Democrats' bill with a two-thirds, veto-proof majority.

"The president is committed to signing a strong civil rights bill and he will not sign a quota bill. The president has a bill in Congress and we think it is the best bill," Popadiuk said.

He said language in the Democratic version strengthening its prohibition on the use of hiring quotas would not be sufficient to attract administration support for the bill.

"Just putting in a sentence does not change the effect of the text," he said.

Foley said on Monday that the Democrats' revised civil rights bill would pass the House with as many votes as last year's version, but a veto-proof majority still appeared elusive. Today, however, Foley said he expected Democrats to gain a two-thirds, veto-proof majority in the House.

"I decided to predict it, and if wrong I'll take it back," Foley said.

Democrats continued private meetings to gauge support for their latest version of job-discrimination legislation. The revision, made by House leaders in private after the bill cleared House committees, incorporates major changes aimed at pulling in the votes of wavering lawmakers - particularly southern Democrats.

President Bush vetoed the civil rights bill last year on grounds it would require racial quotas, and the Senate sustained the veto by a single vote.

House floor action is scheduled for next week, after Congress returns from a Memorial Day recess.

The bill is aimed at making it easier to prove job discrimination and would expand the ability of some discrimination victims to collect damages. It would effectively negate three restrictive Supreme Court rulings in 1989.

Although a final copy of the revised version was not ready, among its changes is the incorporation of a limit on punitive damages in suits charging sexual harassment.

The limit - \$150,000 or an amount equal to compensatory damages, whichever is higher - also was included in last year's vetoed measure but was left out when the bill passed the House Judiciary and Education and Labor committees in March.

Some advocates of women's rights have opposed inclusion of that cap, but Foley defended it as a pragmatic move.

"It's a matter of going as far as we can under the circumstances and making progress," he said. "We don't achieve everything at once."

Other changes include language establishing a legal standard for justifying hiring practices that are fair on their face but have the effect of discriminating against a large class of people.

The new provision would allow employers to justify those practices by showing they "bear a substantial and manifest relationship to the requirements for effective job performance."

That language was tentatively agreed upon in private sessions between civil rights advocates and representatives of the Business Roundtable, a group of big corporations. Those talks were broken off after the business leaders cited a lack of White House support for their efforts.

Still another change in the Democrats' bill would prohibit adjusting job-placement test scores on account of race except when there is evidence of bias in a test.

That change is an effort to head off an expected Republican attack on the practice known as "race-norming." More than half the states now use that method of scoring some job-placement test scores. Under it, blacks and Hispanics receive higher final scores than whites and Asian-Americans who achieve the same raw score.

EDWARD M. KENNEDY, MASSACHUSETTS, CHAIRMAN

CLAIBORNE PELL, RHODE ISLAND
HOWARD M. METZENBAUM, OHIO
CHRISTOPHER J. DODD, CONNECTICUT
PAUL SIMON, ILLINOIS
TOM HARKIN, IOWA
BROCK ADAMS, WASHINGTON
BARBARA A. MIKULSKI, MARYLAND
JEFF BINGAMAN, NEW MEXICO

ORRIN G. HATCH, UTAH
NANCY LANDON KASSEBAUM, KANSAS
JIM JEFFORDS, VERMONT
DAN COATS, INDIANA
STROM THURMOND, SOUTH CAROLINA
DAVE DURENBERGER, MINNESOTA
THAD COCHRAN, MISSISSIPPI

NICK LITTLEFIELD, STAFF DIRECTOR AND CHIEF COUNSEL
KRISTINE A. IVERSON, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON LABOR AND
HUMAN RESOURCES

WASHINGTON, DC 20510-6300

April 23, 1991

The President
The White House
Washington, D.C. 20510

Dear Mr. President:

We understand that legislation may be debated during the 102nd Congress that would prohibit the employment of permanent replacement workers during an economic strike. We refer specifically to S. 55, and its companion, H.R. 5, which are currently pending in the Senate Labor and Human Resources Committee and House Education and Labor Committee, respectively.

This legislation, if enacted, would upset the delicate balance in labor relations that has been an essential part of this nation's legal framework for more than half a century and has given us a collective bargaining system that works to the mutual benefit of labor and management.

Should this bill or any similar legislation be passed by Congress that adversely affects the status of replacement workers or that upsets the existing balance in collective bargaining, we will stand with you and support your veto should you choose to take this action.

Sincerely,

Hank Brown
 Sam Nibb
 John Hatch
 John Smith
 John Simpson
 John Legar
 John Thompson
 Frank H. Munkler
 Nick McConnell
 Long Ehang
 Joe Lee
 Chuck Grasley
 Fred Lockman
 Sam Hahn
 John K. Riche
 John H. Kelly
 John Speer Symms
 John Warner
 Bill Reth

Carmine Mach

Phil F

Bob Kasser

John H. Chafee

Jake Lamm

Larry Pressler

Don Bats

Samuelson

Neil Stoh

Jim Jeffords

Bill Bond

THE WHITE HOUSE
WASHINGTON

May 21, 1991

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: C. BOYDEN GRAY *CMH*

SUBJECT: New Fact Sheet on the President's Civil Rights Bill

Attached, as you requested, is a new fact sheet on the President's civil rights bill.

Attachment

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT'S CIVIL RIGHTS BILL

- o The President's bill -- H.R. 1375 -- includes all of the worthwhile measures supported by a bipartisan consensus:
 - o Overturns the Patterson and Lorraine decisions.
 - o Overturns the Wards Cove decision by shifting the burden of proof to the employer in defending "business necessity."
 - o Creates new monetary remedies under Title VII with meaningful caps.
 - o Authorizes expert witness fees in civil rights cases.
 - o Extends the statute of limitations in cases involving the U.S. Government, and authorizes the award of interest against the Government.
- o Only the President's bill uses the exact language from the holding in Griggs in defining "business necessity" -- "manifest relationship to the employment in question."
- o Only the President's bill includes the exact "business necessity" language taken from the 1979 Beazer opinion, which was accepted in the Wards Cove dissent (written by the author of Beazer).
- o Any deviation from the exact language of the Supreme Court's pre-Wards Cove holdings will inevitably raise the risks for employers who do not have the "right" numbers -- years of litigation will be needed to sort out the meaning of the new definition and employers who cannot endure that litigation will have to use quotas.
- o Only the President's bill will avoid creating new pressures on employers to engage in "race norming."
- o Only the President's bill will permit the President's educational reform initiative to go forward unimpeded (see attached op-ed by Dr. Chester Finn).
- o Only the President's bill preserves the right of victims of illegal quotas to have their day in court and to be treated like other civil rights plaintiffs.
- o Only the President's bill will avoid a new litigation explosion and new attorneys fees -- a lawyers' bonanza.

Education Reform vs. Civil Rights Agendas

By Chester E. Finn Jr.

The Achilles' heel of education renewal is the lack of real-world incentives for young Americans to excel in school. Creating such incentives without triggering charges of discrimination is harder still.

Sure, it's important to get a diploma. But among those who complete high school, it matters little which courses they take, how hard they study or what grades they earn.

The reason, said the Commission on the Skills of the American Workforce in its 1990 report, is that employers have come to see the diploma as more a clue to character than to learning. "They realized long ago," the commission tartly notes, "that it is possible to graduate from high school in this country and still be functionally illiterate."

An ever growing proportion of high

Chester E. Finn Jr., professor of education at Vanderbilt University, is author of "We Must Take Charge: Our Schools and Our Future." He was an Assistant Secretary of Education during the Reagan Administration.

Tough tests will aid minority students.

school graduates now heads for college rather than the workplace. But not more than 50 U.S. campuses reject more applicants than they admit. Most of our 3,400 degree-offering institutions welcome anyone with a heartbeat and a checkbook — and the latter may be waived if you qualify for financial aid.

Open access to higher education is a prized feature of American society. But what message does it send to the 11th grader deciding whether to stay home on Tuesday night to revise his chemistry lab report or go out and party with his friends?

President Bush's new education strategy, introduced last month, would change all this. The plan, developed by Secretary of Education Lamar Alexander and a group of advisers (myself included), proposes to set world-class standards in English, math, science, history and geography, and to accompany these with new national tests that colleges and

employers will use in their admissions and hiring decisions.

When that day dawns, young people will have incentives to study. Admissions and personnel offices will confer real rewards on those who attain the new, higher standards in school and will levy unwelcome consequences on those who don't. In response, millions of students will alter their behavior. Americans, regardless of background, will take learning seriously because it will make a practical difference in their lives.

What happens in the meantime, however, if those new standards and tests yield results that differ by gender, race or ethnic group? Will any college or employer dare to use them?

Federal law already makes it difficult for employers to require any educational credentials or test scores that have a "disparate impact." Pending civil rights legislation would make this harder still. The Democrats' bill requires employers to prove that tests bear a "significant relationship to successful performance of the job." Even the Administration's milder version expects any education credentials to show a "manifest relationship" to the job.

How many personnel directors will be able to convince a Federal enforcer or judge that a young person's

command of science and geography is germane to the work of a forklift operator or receptionist? Yet so long as employers are inhibited from examining a candidate's test scores, "rational" students will see no payoff for buckling down to learn such subjects. High marks won't matter.

Colleges could easily justify stiffer academic prerequisites. But few campuses can afford to be pernickety in their admissions decisions — and virtually all are determined to enroll more minority students at any cost. Never mind that the soaring dropout rate among minority college students is a sign of the weak educational foundation that reformers hope to strengthen.

A thoroughly revamped education system would help end this paralysis. Each year we would have millions more young Americans schooled, to world standards as proved by test results that are indistinguishable by race, gender or ethnicity.

Today, however, we face a Catch-22 situation in which few students are apt to change their study habits because neither employers nor colleges reward academic achievement. The President is urging them to do so. Yet any that respond may be accused of discriminating. Is that any way to reach our national education goals?

225
2800

COMPROMISE FEATURES OF THE DEMOCRATIC SUBSTITUTE

Consensus was reached on a number of major issues by civil rights groups and the business community before discussions were terminated. Many essential points of concern which were identified are addressed in a substitute to be offered during Floor consideration.

1. CAP ON DAMAGES --

The substitute would limit punitive damages in cases of intentional discrimination to \$150,000 or the amount of compensatory damages, whichever is greater, as passed last Congress.

H.R. 1 does not place a limit on the amount of damages.

2. BUSINESS NECESSITY -- A key disagreement about the legal standards to apply in discrimination cases was resolved by compromise language that bridges the difference between the various formulations.

The new operative words of the legal definition would be "substantial and manifest relationship". In addition, another key term, "requirements for effective job performance", was also defined in a manner designed to accommodate business concerns.

Thus, the term "required by business necessity" means the practice or group of practices must bear a substantial and manifest relationship to the requirements for effective job performance.

3. NO QUOTAS -- Language would make clear that quotas in employment practices are not encouraged, required, "or permitted".

4. DISPARATE IMPACT CASES -- New language specifies that:

-- Plaintiffs must challenge specific practices unless the court determines, after discovery, that plaintiffs cannot identify specific practices.

-- Employers may defend against a challenge to a group of practices by demonstrating that a "specific practice does not contribute in a meaningful way" to the disparity.

5. RELATIVE QUALIFICATIONS/ADDITIONAL QUALIFICATIONS -- New language makes clear that:

-- Employers may rely on relative qualifications or skills as the basis for employment decisions.

-- Employers have the right to determine the requirements for a job, as long as they are job related.

6. STATUTE OF LIMITATIONS: Lowered from two years in H.R. 1 to 18 months.

7. COERCED WAIVER OF ATTORNEY'S FEES -- would still be prohibited, but allows for negotiations of fees, including a voluntary waiver. Eliminates self-enforcing provision opposed by business.

8. TESTING -- New language prohibits the adjustment of employment test scores on the basis of race, color, sex, religion, or national origin, as well as the use of tests which are not valid and fair. In addition, it would permit an employer to use alternative selection procedures.

9. RETROACTIVITY -- Precludes retroactive application of the legislation in the absence of a finding of "manifest injustice" under existing Federal Rules of Procedure.

239487

EDWARD I. KOCH

THE CHIEF of STAFF
has seen

May 15, 1991

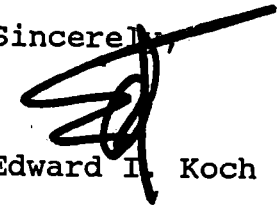
The Hon. John H. Sununu
Chief of Staff to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear John:

The enclosed information regarding the
H.R.1 legislation was sent to every member of
Congress. I oppose this legislation because
I believe it will encourage quotas.

All the best.

Sincerely,



Edward I. Koch

EIK/mgl

enclosures

EDWARD I. KOCH
1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104

May 15, 1991

SENT TO ENTIRE CONGRESS:

H.R.1 will soon be before you for a vote. I urge you to vote against it. You might ask, how can it be that I, your former colleague who voted for every civil rights bill when in Congress and as a young lawyer in 1964 went to Mississippi to defend black and white civil rights workers who were registering voters, could take such a position? The answer is simple. H.R.1 is not a civil rights bill. It is a bill which will encourage quotas based on race, ethnicity, religion and gender.

I am opposed to H.R.1 because it will adversely affect everyone in this country: The vast majority of our citizens will suffer reverse discrimination in employment, while others will be provided preferential treatment and, therefore, blamed for the resulting unfairness. Yet, tragically, this bill does nothing to assist those who need training and better education in order to compete in the labor market.

Over the years, those who now advocate H.R.1 concealed the impact of some of the legislation, court decisions and administrative agency rulings which in the past have encouraged quotas by referring to those measures benignly as affirmative action. I support affirmative action when it is defined as reaching out and encouraging minorities to apply for a position or contract, providing them with mentoring services where needed but always filling the position or awarding the contract solely on merit and never excluding any group on the basis of race, ethnicity, religion or gender. Regrettably, affirmative action pressed by the proponents of H.R.1 has too often included goals, timetables and sanctions: euphemisms for quotas.

One particularly egregious example which has treated job applicants unfairly based on race has been the little known technique of race norming. In case you are not familiar with race norming, enclosed is a memorandum describing what it is, why it's unfair and its impact in creating and encouraging quotas.

Many people fear that if they publicly oppose H.R.1 the proponents will, as some have already done, falsely and unfairly label them as racist. It takes courage, notwithstanding those false and sometimes deliberately unfair attacks, to publicly debate H.R.1 on the merits.

I recently received a letter from Ambassador Morris Abram. No one in the civil rights movement can dispute his credentials as one of the historical advocates of civil rights legislation. Let me cite his reasons for opposing H.R.1 in his own words. The legislation will:

- "- rewrite twenty years of civil rights law by effectively making racial, ethnic, religious, and sex imbalance alone presumptively illegal;
- hold the employer guilty until proven innocent by forcing him to justify any racial, gender, religious, or ethnic statistical imbalance in any job in his workforce;
- eliminate the longstanding requirement that a plaintiff identify a specific employment practice causing a racial, ethnic, or gender imbalance;
- create a presumption of guilt so difficult to overcome and so costly to fight that employers will simply capitulate and hire by the numbers, impairing not only the principle of American equality but, inevitably, American efficiency and productivity;
- deny individuals their day in court by effectively barring challenges to civil rights consent decrees and litigated judgments to which they were not parties;
- in the real world of business, fear of litigation, in particular litigation with devastating publicity consequences, makes the temptation to hire by the numbers almost irresistible."

It cannot be said any better, so I won't try.

Also enclosed is a more detailed analysis of H.R.1 and some of the purported amendments that its sponsors are considering offering.

All the best.

Sincerely,



Edward I. Koch

enclosures

"Race Norming" and H.R. 1

What is "Race Norming"?

"Race norming" or "within-group scoring" refers to the practice of reporting test scores in a manner that compares test takers only with members of their own racial or ethnic group. This is done by altering raw scores so as to prevent the reported scores from reflecting the truth about disparities between the performances of various racial or ethnic groups. If, for example, a black, an Hispanic, and an Asian test taker each scored 270 points on a test, this might place the black applicant in the 53rd percentile among members of his group, the Hispanic in the 35th percentile among his group, and the Asian in the 16th percentile of the "non-minority" category. Race-normed reporting would give the black a score of 53 on a scale of 100, while the Hispanic would have a reported score of 35 and the Asian a reported score of only 16, although in truth each had an identical raw score.

Why Do Employers and Employment Agencies Use Race Norming?

Race-norming, in essence, is simply an efficient device for imposing racial quotas in cases where an employment test is used to fill jobs. The most profound pressures to engage in race-norming arise from the disparate impact theory of discrimination. Under this theory, a test used to screen applicants for jobs or promotions is presumptively illegal if members of one racial or ethnic group are selected in disproportionately lower numbers. The standard device for overcoming this presumption of illegality for written aptitude tests has been to conduct professional "validation studies" proving that the test accurately predicts job performance. Technical validation of ordinary aptitude tests, however, is often impossible; when it is possible, it is usually very expensive. Race-norming automatically eliminates disparate impact, and thereby eliminates the need to perform expensive validation studies.

The use of race-norming has been tacitly encouraged to some extent by the very existence of the disparate impact theory of discrimination. More immediate pressures, however, have been brought to bear through enforcement policies employed by the Department of Labor and the EEOC. The official statement of those policies, the "Uniform Guidelines on Employee Selection Procedures," was adopted during the Carter Administration (1978) and has not been revised since that time. In discussing "formal and scored procedures," the Guidelines provide:

"Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or

otherwise justify continued use of the procedure in accord with Federal law." 29 C.F.R. 1607.6(B)(2); 41 C.F.R. 60-3.6 (B)(2) (emphasis added).

This is an open invitation to the use of race-norming. More important, it is a tool used by the Government's enforcement bureaucrats to pressure employers into adopting race-norming techniques.

In a recent public statement (copy attached), the current Chairman of the EEOC has stated that the encouragement of race-norming is not now agency policy. The letter, however, does not deny that it previously was agency policy. Indeed, the Chairman's letter states that "we do know that policies promoting race and gender preferences have come about in the 25 years that EEOC has enforced Title VII."

In addition, the Department of Labor has for many years fostered the use of race-norming by state employment agencies that use an aptitude test developed by the Department. The justification for this program, which is still being operated despite objections from the Department of Justice, is that race-norming is an appropriate way to comply with the Uniform Guidelines without the need for validation studies. For employers anxious to achieve "goals and timetables" set by the Labor Department's Office of Federal Contract Compliance Programs, these referrals provide a low-cost mechanism for meeting their quotas. For employers who are unaware that the scores reported to them by the state employment agency are race-normed, the effect of this program is to make them unwitting accomplices in a government-sponsored quota scheme.

How would H.R. 1 Increase the Use of Race Norming?

H.R. 1 would support and encourage the use of race-norming in three main ways.

First, by creating new and almost insurmountable hurdles that employers would have to overcome in attempting to defend selection practices that have an adverse impact, H.R. 1 would create powerful new incentives for the use of quotas. For employers who rely on formal and scored tests, the most efficient way to meet these quotas will be through race-norming.

Second, we can expect legislative history specifically ratifying the Carter Administration's Uniform Guidelines. The House Judiciary Committee's Report on last year's bill (which was almost identical to H.R. 1) contained the following statement: "The Uniform Guidelines represent the interpretation of Griggs applied by the federal government in enforcing Title VII. Its provisions embody the legal principles that were accepted and applied prior to Wards Cove, and which the Committee intends to

restore." House Report No. 101-644, at pg. 18 (July 31, 1990). Similar language can be expected this year.

Third, it is possible that there will be legislative history specifically designed to increase the pressure for race-norming. Such legislative history would probably be slipped into a relatively technical and obscure discussion of testing and validation techniques, as it was last year. See Senate Report No. 101-315, at pg. 44 (June 8, 1990). The Committee Reports, written by sophisticated staffers and lobbyists, would likely be given great interpretive weight by the courts in this case because of the fact that race-norming is an especially apt device for employers to use in avoiding liability under the disparate impact provisions of the bill.

Can the Problem Be Solved by an "Anti-Race-Norming" Amendment to H.R. 1?

The pressures on employers to employ race-norming or equivalent devices would not be removed by an amendment specifically addressing the problem.

First, any language acceptable to the sponsors of H.R. 1 would probably include qualifiers designed to deprive the amendment of legal effect. The cosmetic and meaningless "anti-quota" language included in H.R. 1 shows that this is the preferred technique of the lawyers who control this bill.

Second, it would be difficult (though perhaps not impossible) for anyone to draft language both broad enough and precise enough to outlaw all the forms of race-norming that could possibly be imagined.

Third, even if such language were successfully drafted and then accepted by the Congress, it would do nothing to remove the pressures to adopt quotas created by the disparate impact provisions of H.R. 1. Race-norming is simply an efficient mechanism for imposing quotas when scored tests are used to screen applicants. If race-norming cannot be used, employers will simply be forced to adopt less efficient mechanisms for achieving the same result. One obvious alternative would be to switch to "multi-factor" or "whole-person" selection systems in which race plays some vague and unquantified role as a "factor" along with test scores. This is a widely used device for filling quotas at colleges and universities, as illustrated by the recent controversy at Georgetown, and it works just as well in the employment context.

Analysis of H.R.1 and Purported Amendments

I understand that, once again, proponents of H.R.1 are circulating cosmetic amendments aimed at masking the bill's quota effect. As was the case with the various proposals floated and repudiated last year, the language I have seen does not remotely solve the problem. The Wards Cove v. Antonio decision is consistent with Griggs v. Duke Power. In Griggs and subsequent Supreme Court disparate impact decisions, the Supreme Court, for example, defined "business necessity" as "manifest relationship to the employment in question." Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971); Albemarle Paper Co. v. Moody, 422 U.S. at 425 (1975); Dothard v. Rawlinson, 433 U.S. at 329 (1977); New York Transit Authority v. Beazer, 440 U.S. at 587 n. 31 (1979); and Watson v. Ft. Worth Bank and Trust, 487 U.S. at 997 (O'Connor plurality opinion). Even Justice Stevens' Wards Cove dissent cites the "manifest relationship" language at least three times as the applicable disparate impact standard. 109 S.Ct. at 2129, 2130 n.14.

Any change in the Griggs "manifest relationship" phrase puts pressure on employers to resort to quota hiring and promotions in order to avoid costly lawsuits.¹ For example, I understand the proponents of H.R.1 are circulating a warmed-over definition of business necessity as meaning "substantial and manifest relationship to the requirements for effective job performance." (emphasis supplied). This definition goes well beyond Griggs. It does so by adding "substantial" to the definition -- repudiated in the Senate last year after less than two months. Moreover, by tying the definition to "effective job performance," this language makes it impossible for an employer to raise standards beyond those which produce a minimally qualified (i.e. minimally effective) employee if to do so results in disparate impact.

A new subparagraph circulated by proponents of H.R.1, purportedly addressing this problem and allegedly allowing employers to rely on relative qualifications, clearly fails.

If disparate impact results from the effort to raise standards, the higher standards must meet the new, onerous definition of business necessity -- which includes the need to show substantial relationship to effective job performance. Thus, this new subparagraph is circular and, thus, meaningless.

¹ The Wards Cove formulation, which uses language based on the Supreme Court's 1979 Beazer decision (the employment practice "serves in a significant way, the legitimate employment goals of the employer"), is fully consistent with Griggs.

Page Two
Analysis

Further, the proposed language does not solve H.R.1's flaw in allowing blanket challenges to an employer's practices. It does not require the plaintiff to identify a particular employment practice causing the alleged disparate impact.

I am concerned that while proponents of H.R.1 may offer these or other cosmetic changes to their bill, they will not relinquish the essential elements of the bill which will encourage quotas.

I urge you to vote no on H.R.1.

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: MAY 20, 1991

NAME OF CORRESPONDENT: THE HONORABLE EDWARD I. KOCH

SUBJECT: FORWARDS MATERIALS ON THE CIVIL RIGHTS ACT

		ACTION		DISPOSITION	
ROUTE TO:		ACT	DATE	TYPE	C COMPLETED
OFFICE/AGENCY	(STAFF NAME)	CODE	YY/MM/DD	RESP	D YY/MM/DD
JOHN SUNUNU		ORG	91/05/20		___/___/___
	REFERRAL NOTE: _____		___/___/___		___/___/___
	REFERRAL NOTE: _____		___/___/___		___/___/___
	REFERRAL NOTE: _____		___/___/___		___/___/___
	REFERRAL NOTE: _____		___/___/___		___/___/___
	REFERRAL NOTE: _____		___/___/___		___/___/___

COMMENTS: _____

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: _____

CS MAIL USER CODES: (A) _____ (B) _____ (C) _____

```

*****
*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                        *                      *CORRESPONDENCE:   *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL *              OF SIGNER *
*D-DRAFT RESPONSE      *C-COMPLETED          *      CODE = A      *
*F-FURNISH FACT SHEET  *S-SUSPENDED          *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                      *              OUTGOING *
*R-DIRECT REPLY W/COPY *                      *                      *
*S-FOR-SIGNATURE       *                      *                      *
*X-INTERIM REPLY       *                      *                      *
*****

```

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
(ROOM 75,0EOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING
LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.

THE WHITE HOUSE
WASHINGTON

5/13/91

TO: JOHN H. SUNUNU

FROM: **FRED McCLURE**
Assistant to the President
for Legislative Affairs

done 5-15-91

- ☒ FYI
- ☒ Comment
- ☒ Action

Attached is the memorandum from Jack Howard to me regarding his meeting with Brooks' staff. PLEASE ADVISE AS TO HOW YOU WANT TO PROCEED.

Porter
Second, on another matter, during our meeting with the House folks re: striker replacement, you indicated that you would find a White House speaker for the business coalition rally on the Hill. The rally is scheduled for Wednesday. We need closure on this issue. Please let me know.

Brooks, White House, Tuesday

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Memo	From Jack Howard to Frederick McClure Re: Civil Rights (2 pp.)	5/10/91	P 3	

Collection:

Record Group: Bush Presidential Records
Office: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files
WHORM Cat.:
File Location: Civil Rights (1 of 2) 1991 [6]

Open on Expiration of PRA
(Document Follows)
By JP (NLGB) on 10/28/05

Date Closed: 1/3/2005	OA/ID Number: 29146-004
FOIA/SYS Case #: 1998-0004-F[2]	Appeal Case #:
Re-review Case #: 2005-0426-S	Appeal Disposition:
P-2/P-5 Review Case #:	Disposition Date:
AR Case #:	MR Case #:
AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

MEMORANDUM FOR FRED MCCLURE

May 10, 1991

FROM: JACK HOWARD 

SUBJECT: Civil Rights

On Thursday, Jack Brooks called the Governor and said he wanted to try to work something out on civil rights. Evidently Brooks stressed that he wanted me to meet with Yarowsky and that Boyden Gray was to be kept out of this. Sununu then called me and told me to go talk with Jon Yarowsky, the Judiciary Committee's chief counsel, and report back to him with my findings. Since Sununu was out of town Friday, I could not do that.

Friday afternoon I met with Yarowsky. He reiterated Brooks' desire to try to find a mutually acceptable compromise. I have a good enough relationship with Yarowsky to know that he is serious. In our discussion, I emphasized that everything would have to be on the table, not just damages as Brooks has hinted at recently. Yarowsky agreed and indicated that neither he nor the Chairman thought we were that far apart on any of the issues.

This is a significant shift in Brooks' thinking. Previously he has been intransigent, saying that our reading of H.R. 1 was wrong and that we should just change our minds.

There are at least two reasons for this shift. First, he knows what the results of the Democratic whip checks are and he knows how unhappy the Southern/Conservative Democrats are. They do not have enough votes to get to veto override strength and they are having an extremely difficult, wrenching time finding them.

Two, I suspect, and these suspicions were all but confirmed by Yarowsky, that Brooks' phone call to Sununu was triggered by his growing anger at the civil rights groups. He has long expressed frustration with the "groups" for dictating their legislative proposals to the committee. Apparently this was standard practice for them during the Rodino regime. Now that Brooks has taken over, his frustration has been mounting. What may have put him over the edge this time was the way in which he found out that H.R. 1 was scheduled for action this week. I think I may have been the first one to tell him because he seemed surprised when I asked him about it last Thursday. He did not react very well. Yarowsky also expressed considerable frustration with the Democratic Leadership staff for not telling him of their plans. The Sununu call was placed later that day.

I am as skeptical as anyone but I have talked with Brooks enough to know that he is itching for the opportunity to show the "groups" who is calling the shots, and this may be it.

This has the potential of becoming analogous to the child care fight. Initially we fought our opponents to a draw by threatening veto and showing veto strength. Then we threw the "long bomb" of reaching out to Tom Downey and George Miller. After a lot of back and forth negotiations, we ended up with a child care bill reflecting our

core values and structured on our fundamental principles. The same scenario is beginning to unfold here.

Brooks is obviously looking to move away from the civil rights groups, just as Downey and Miller were moving away from the Children's Defense Fund/ABC lobbyists. That presents us with a tactical advantage that we should seize. I recommend that we play this out by arranging a meeting between Brooks and Sununu as soon as possible. Monday would be ideal. Those two have to talk to decide how much further this is worth pursuing. My preference would be to send Sununu up to see him, but others may feel otherwise.

We should also touch base with our key allies (Michel, Hyde and Goodling) and let them know that Brooks has made an overture, and that Sununu will be meeting with Brooks. We should stress that no decisions will be made without their consultation and participation.

If anything promising comes out of the Brooks/Sununu meeting, we will have to bring those three people in for a follow-up meeting with Sununu and consult with them on, one, whether this is worth pursuing, and, two, how we proceed from here. I am confident that they will say that it is worth pursuing.

Taking it a step further, if we get to the stage where we actually start trying to work something out, Goodling and Hyde should be the lead, and ideally, only negotiators for the Republicans.

Obviously this has to be handled with extreme discretion as well as speed. If this sits around and festers for too long, it will blow up.

cc: Nick Calio

**THE WHITE HOUSE
WASHINGTON**

May 9, 1991

cl

TO: Governor Sununu

FROM: Bobbie Kilberg
Kathy Jeavons

We thought you should see this.

THE CHIEF of STAFF
has seen

OFFICERS OF THE
NATIONAL COMMISSION
National Chairman
MELVIN SALBERG
National Director
ABRAHAM H. FOXMAN
Chairman, National
Executive Committee
DAVID H. STRASSLER
Associate National Director
JUSTIN J. FINGER
Honorary Chairmen
KENNETH J. BIALKIN
SEYMOUR GRAUBARD
MAXWELL E. GREENBERG
BURTON M. JOSEPH
BURTON S. LEVINSON
Honorary Vice Chairmen
LEONARD L. ABESE
DOROTHY BINSTOCK
RUDY BOSCHWITZ
EDGAR M. BRONFMAN
MAXWELL DANE
MAX FISHER
BRUCE I. HOCHMAN
GERI M. JOSEPH
MAX M. KAMPELMAN
SAM KANE
PHILIP M. KLUTZNICK
PHILIP KRUPP
SAMUEL H. MILLER
BERNARD D. MINTZ
MILTON MOLLEN
BERNARD NATH
ROBERT R. NATHAN
ANITA PERLMAN
S.O. SHAPIRO
THEODORE H. SILBERT
SIDNEY R. YATES
Vice-Chairmen
SYDNEY JARKOW
NAT KAMENY
LUCILLE S. KANTOR
IRVING SHAPIRO
JOEL SPRAYREGEN
WILLIAM VEPRIN
Vice-Chairman
National Executive Committee
ROBERT G. SUGARMAN
Honorary Chairman, National
Executive Committee
DAVID A. ROSE
RONALD B. SOBEL
Honorary Treasurers
CHARLES GOLDRING
BENJAMIN GREENBERG
MOE KUDLER
Treasurer
ROBERT H. NAFTALY
Assistant Treasurer
MICHAEL SCHULIZ
Secretary
MICHAEL NACHMAN
Assistant Secretary
MEYER EISENBERG
President, B'nai B'rith
SEYMOUR D. REICH
Executive Vice President
THOMAS NEUMANN
President, B'nai B'rith Women
HARRIET HORWITZ
Executive Director
ELAINE BINDER
DIVISION DIRECTORS
Civil Rights
JEFFREY P. SINENSKY
Communications
BARBARA WALDEN
Community Service
CHARNEY V. BROMBERG
Development
SHELDON FLIEGELMAN
Finance and Administration
BOBBIE ARBESFELD
Intergroup Relations
ALAN BAYER
International Affairs
KENNETH JACOBSON
Leadership
Assistant to the National Director
MARVIN S. RAPPAPORT
Washington Representative
JESS N. HORDES
General Counsel
ARNOLD FORSTER



May 7, 1991

The President
The White House
Washington, DC 20500

Dear Mr. President:

Despite our differences over specific provisions of the pending civil rights legislation, we share an abiding concern for eradicating discrimination and fostering equality of opportunity for all individuals. ADL has fought and spoken out vociferously against race-conscious preferences -- including quotas --- because they subvert the principle of equality. We believe you share this philosophy, that the way to promote fairness is to practice fairness.

One manifestation of preferential treatment that ADL has opposed is the federal government's use of employment tests that are adjusted according to an applicant's race or ethnicity. In order to compensate for the fact that minorities score disproportionately lower than whites on the Department of Labor's "General Aptitude Test Battery" (GATB), minority applicants are ranked only within their own particular racial or ethnic group, rather than with the entire applicant pool. This implies that minorities cannot compete against the general applicant pool and fosters the erroneous and offensive notion of racial inferiority.

In June 1989, ADL corresponded with then Secretary of Labor Elizabeth Dole and Attorney General Dick Thornburgh voicing our concern over this practice, currently referred to in the press as "race-norming." At that time, continued use of the GATB was under review. One year later, the Department of Labor published a proposed policy discontinuing the use of GATB, and in August 1990 ADL submitted comments expressing our support for the proposal.

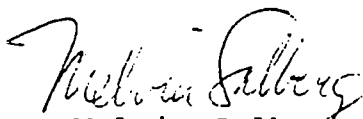
The practice of "race-norming" illustrates the destructiveness of preferential treatment. Race preferences focus on applicants merely as statistics to be manipulated in order to meet some arbitrary, predetermined result. Rather than affirmatively and constructively compensating for past discrimination or disadvantage, preferences merely promote race consciousness and discrimination.

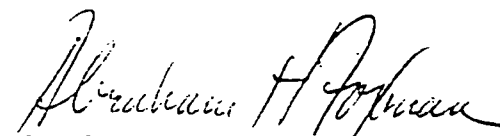
In the case of objective employment criteria such as tests, if there is a significant disparity between scores of minorities and whites, that issue should be addressed constructively; the test should be scrutinized to determine whether it fairly and accurately measures the skills and abilities required for the job. If that inquiry does not account for the statistical disparity, then the effort of the federal government should be directed to remedying the situation by offering educational assistance and training to low-scoring applicants so that they may acquire the necessary skills.

ADL believes that it is illegal, ineffective and immoral for employers to hire or promote by reference to an individual's race, ethnicity or gender. To the extent that the business community believes that playing the "numbers game" through the establishment of defensive quotas will provide insurance against potential lawsuits under the Civil Rights Act, it is the responsibility of advocates truly committed to civil rights to correct this misconception. The "race-norming" sanctioned and promoted by the federal government sends the opposite message, signaling employers that "correct" numbers are in fact the ultimate and preferred objective.

While we have a difference of opinion as to whether or not the Civil Rights Act will promote quotas, we understand and respect your concerns. The present controversy over "race-norming" provides you with a clear opportunity to underscore your opposition to racial preferences and reinforce your commitment to equal opportunity. We urge you to consider issuing a strong statement denouncing "race-norming" and directing the agencies under your administration, including the Department of Labor, to abandon this misguided program.

Sincerely,


Melvin Salberg
National Chairman


Abraham H. Foxman
National Director

MS/AHF:jb

cc: Jess N. Hordes, Washington Representative

Anti-Defamation League of B'nai B'rith

WASHINGTON, D.C. OFFICE 1100 Connecticut Avenue, N.W. Suite 1020, Washington, D.C. 20036

JESS N. HORDES
Director

Tel: 202/452-8320, FAX: 202/296-2371

For more information contact:

Jess Hordes, (202) 452-8320

FOR IMMEDIATE RELEASE

New York, NY, May 8...The Anti-Defamation League today urged President Bush to order the Labor Department and other government agencies to abandon the "misguided" policy of discriminatory "race-norming."

Race-norming, as it is currently referred to in the press, is a practice promoted by the Labor Department whereby minority applicant test scores are ranked only by comparison within their own racial or ethnic group, rather than with the entire applicant pool. This implies that minorities cannot compete against the general applicant pool and fosters the erroneous and offensive notion of racial inferiority.

A letter from Melvin Salberg, ADL's national chairman, and Abraham H. Foxman, national director, asked the President to issue a "strong statement" denouncing and abandoning the practice.

"ADL believes that it is illegal, ineffective and immoral for employers to hire or promote by reference to an individual's race, ethnicity or gender," they said. "The present controversy provides you with a clear opportunity to underscore your opposition to racial preferences and reinforce your commitment to equal opportunity."

The ADL leaders criticized the practice of "focusing on applicants merely as statistics to be manipulated in order to meet some arbitrary, predetermined result.

"Rather than affirmatively and constructively compensating for past discrimination or disadvantage, preferences merely promote race consciousness and discrimination," they concluded.

#

N · A · W

April 15, 1991

Mr. James D. Robinson III, Chairman
American Express Corporation
World Financial Center, American Express Tower
200 Vesey Street
New York, NY 10285

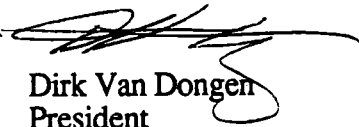
Dear Mr. Robinson:

I am writing you on behalf of our 45,000 member companies to protest, strongly, your current activities regarding the so-called "civil rights" bill.

By entering into negotiations with proponents of this legislation, you are potentially creating disunity in the business community on an issue of importance to all of us. And, by doing so, you create a false impression that business is at odds with the Bush Administration on this matter, which indeed many of us are not as the enclosed letter to Governor Sununu indicates.

Since you do not speak for the vast majority of American business, our members do not want you to determine their hiring or workplace practices for them. We request, therefore, that you cease further negotiations immediately.

Sincerely,



Dirk Van Dongen
President

Enclosure

cc: Drew Lewis

DVD/jg

N · A · W

April 15, 1991

Mr. Robert C. Allen, Chairman
AT&T
550 Madison Avenue
New York, NY 10022

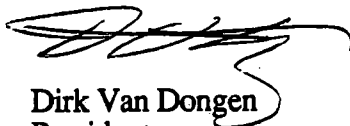
Dear Mr. Allen:

I am writing you on behalf of our 45,000 member companies to protest, strongly, your current activities regarding the so-called "civil rights" bill.

By entering into negotiations with proponents of this legislation, you are potentially creating disunity in the business community on an issue of importance to all of us. And, by doing so, you create a false impression that business is at odds with the Bush Administration on this matter, which indeed many of us are not as the enclosed letter to Governor Sununu indicates.

Since you do not speak for the vast majority of American business, our members do not want you to determine their hiring or workplace practices for them. We request, therefore, that you cease further negotiations immediately.

Sincerely,



Dirk Van Dongen
President

Enclosure

cc: Drew Lewis

DVD/jg

April 12, 1991

Governor John H. Sununu
Chief of Staff
The White House
Washington, DC 20500

Dear Governor Sununu:

Many of the businesses and organizations which have consistently worked very hard to advance equality of opportunity through fair and balanced civil rights legislation are concerned over recent reports about developments between a few large companies and representatives of the civil rights groups.

As reported in the Washington Post this week, it appears that negotiations between these parties are about to reach a "make or break" point. Since the legislation currently pending in the U.S. House of Representatives is limited to H.R. 1, a bill similar to the legislation successfully vetoed by the President last year, and H.R. 1375, the President's bill, the undersigned are concerned that these negotiations may undermine the President's efforts to achieve strong enforcement of equitable federal equal employment statutes. Furthermore, many organizations representing businesses of various sizes have been totally excluded from the discussions, and since we are not familiar with the content of the pending proposals, we are quite concerned that these negotiations may produce a measure that falls short of the President's goals and does not accurately reflect our perspective.

We are writing, therefore, to state categorically that those few companies which are involved in the ongoing negotiations do not necessarily represent the views of the majority in the business community. We remain committed to supporting the President's efforts and we offer any and all assistance you deem appropriate.

Sincerely,

Associated Builders and Contractors
Chamber of Commerce of the U.S.A.
Financial Executives Institute
Florists' Transworld Delivery Association
National-American Wholesale Grocers' Association
National Association of Wholesaler-Distributors
National Machine Tool Builders Association
National Restaurant Association
National Roofing Contractors Association
National Stone Association
National Truck Equipment Association
Sheet Metal and Air Conditioning Contractors' National Association
Society of American Florists

April 12, 1991

Governor John H. Sununu
Chief of Staff
The White House
Washington, DC 20500

Dear Governor Sununu:

Many of the businesses and organizations which have consistently worked very hard to advance equality of opportunity through fair and balanced civil rights legislation are concerned over recent reports about developments between a few large companies and representatives of the civil rights groups.

As reported in the Washington Post this week, it appears that negotiations between these parties are about to reach a "make or break" point. Since the legislation currently pending in the U.S. House of Representatives is limited to H.R. 1, a bill similar to the legislation successfully vetoed by the President last year, and H.R. 1375, the President's bill, the undersigned are concerned that these negotiations may undermine the President's efforts to achieve strong enforcement of equitable federal equal employment statutes. Furthermore, many organizations representing businesses of various sizes have been totally excluded from the discussions, and since we are not familiar with the content of the pending proposals, we are quite concerned that these negotiations may produce a measure that falls short of the President's goals and does not accurately reflect our perspective.

We are writing, therefore, to state categorically that those few companies which are involved in the ongoing negotiations do not necessarily represent the views of the majority in the business community. We remain committed to supporting the President's efforts and we offer any and all assistance you deem appropriate.

Sincerely,

Associated Builders and Contractors
Chamber of Commerce of the U.S.A.
Financial Executives Institute
Florists' Transworld Delivery Association
National-American Wholesale Grocers' Association
National Association of Wholesaler-Distributors
National Machine Tool Builders Association
National Restaurant Association
National Roofing Contractors Association
National Stone Association
National Truck Equipment Association
Sheet Metal and Air Conditioning Contractors' National Association
Society of American Florists

THE WHITE HOUSE

WASHINGTON

February 5, 1991

THE CHIEF of STAFF
has seen

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: C. BOYDEN GRAY *CMG*
EDE HOLIDAY *EH*

SUBJECT: Civil Rights Package

Attached for your use tomorrow is a set of talking points on the civil rights package. The talking points outline a list of initiatives which could be included in the package, as well as a summary of a proposed employment discrimination bill.

We have also attached an expanded list of items in the FY '92 budget that could be mentioned or included in the civil rights package. These initiatives are described briefly in the fact sheets OMB released in connection with the budget -- copies of the relevant pages are included.

We are convening a meeting of White House and Justice Department staff tomorrow at 2:30 to discuss which items should be included and the implementation strategy. We will make recommendations to you following that meeting.

Attachments

**TALKING POINTS ON CIVIL RIGHTS
AND OPPORTUNITY PACKAGE**

- o The Administration's civil rights bill (summary of employment discrimination provisions attached) will be announced concurrently with a package of several bills to enhance the power of individuals, families, and communities on several fronts: 1) educational choice; 2) educational flexibility; 3) Davis-Bacon reform; 4) enterprise zones; 5) empowerment opportunity areas; and 6) crime.
- o Educational Choice: The President's upcoming **Educational Excellence Act** would: include \$200 million to provide school districts with an incentive to allow parents to choose the public or private schools their children will attend; allow education grants under Chapters 1 and 2 to be used for choice programs; and provide \$30 million for choice demonstrations.
- o Educational Flexibility: The **Educational Excellence Act** would also incorporate flexibility provisions. Schools would be held accountable for achieving specific educational goals in exchange for increased flexibility in the use of their resources.
- o Davis-Bacon Reform: The **Davis-Bacon Reform Act of 1991** would raise the threshold at which prevailing wage requirements apply to Federal and Federally assisted construction contracts to \$250,000. Raising the threshold expands opportunities for smaller construction firms -- many of which are minority businesses -- and creates employment opportunities for those who have been denied the chance to compete for jobs on Federal construction projects.
- o Enterprise Zones: The **Enterprise Zone and Jobs-Creation Act of 1991** targets tax incentives and regulatory relief to some of our nation's most economically depressed areas. These zones will attack poverty at its roots by attracting seed capital for small business start-ups, creating incentives for entrepreneurial risk taking, and reducing high effective tax rates on those moving from welfare to work.
- o Opportunity Areas: The **Opportunity Area Act of 1991** would enable communities to develop "empowerment opportunities systems" to deliver a range of social services to individuals and families in a manner the community deems most appropriate. States and communities would apply for waivers from Federal statutory and regulatory requirements of various Federal programs.
- o Crime: Freedom from crime is the most basic civil right and the Administration will again propose legislation to get tough on violent criminals.

Summary of Main Provisions for a Civil Rights Bill

Wards Cove.

- o Defend current law or, at most, shift the burden of proof on business necessity.

Martin v. Wilks and Price Waterhouse.

- o Leave current law intact.

Remedies.

- o Create a new anti-harassment statute separate from Title VII and Sec. 1981. This statute would provide the exclusive Federal remedy for all claims of harassment on the basis of race, color, national origin, religion, sex, and disability.
- o Remedies available under this statute would include injunctive relief, back pay, and a capped monetary award. Seventh Amendment issues would be handled as in last year's bill. To discourage inappropriate litigation that might be caused by the availability of the new monetary remedy, include provisions tightening the definition of harassment and provide affirmative protections from liability for employers who maintain strong anti-harassment policies and complaint procedures.
- o This proposal establishes parity for harassment claims between women and minorities at a level that meets the criteria for new harassment remedies set forth in the President's Rose Garden speech last May.

Patterson, Lorange and Crawford Fitting.

- o Overrule, as in last year's bill.

Age Act Notice of Limitations; Interest against the Federal government; Statute of Limitations against the Federal government; Alternative Dispute Resolution provision.

- o Same as last year's bill.

Anti-preference provisions.

- o Dole anti-quota language included in last year's bill. Perhaps also include prohibition against "race norming."

Coverage of congressional employees.

- o Internal enforcement left to Congress, followed by a private right of action in court.

Retroactivity.

- o Prospective coverage only.

INITIATIVES FOR POSSIBLE INCLUSION IN THE
CIVIL RIGHTS AND OPPORTUNITY PACKAGE

Legislation Required:

1. Civil Rights bill.
2. Educational Choice proposals:
 - \$200 million Certificate Program Support Fund;
 - new authority to fund Magnet Schools of Excellence;
 - allow education grants under Chapters 1 and 2 to be used for choice programs;
 - \$30 million for choice demonstrations.
3. Educational Flexibility bill.
4. Davis-Bacon Reform.
5. Enterprise Zones.
6. Empowerment Opportunity Areas.
7. Crime bill.
8. Increased Flexibility for Housing Programs.
9. Use of IRAs for First Home Purchases.
10. Social Security Earnings Test Liberalization.
11. Reforms to the Job Training Partnership Act (JTPA).

Legislation Not Required:

1. Child Care and Health Insurance Tax Credits.
2. Child Care Block Grant.
3. Increase for Housing Vouchers.
4. Funding for HOPE.
5. Reform of the Public Employment Service.
6. Targeted SBA Programs.

**INCREASING CHOICE, EXPANDING OPPORTUNITY,
AND PROVIDING HOPE TO DISTRESSED COMMUNITIES**
(Chapter V. A.)

- o **Child Care and Health Insurance Tax Credits:** A newly expanded Earned Income Tax Credit, and a new Health Insurance Credit will make child care and health insurance more affordable for low-income families with children while assuring maximum freedom of choice over the use of the benefits. For 1992, these credits will provide \$10 billion in support to working families with children, and \$69 billion over the next five years. These credits were created as part of the budget agreement last fall.
- o **Child Care Block Grant:** The new Child Care and Development Block Grant, the first grant program of its kind to require that assistance be offered through certificates to ensure parental choice, will be funded at \$732 million.
- o **Educational Choice:** The budget includes funding for the President's upcoming Educational Excellence Act legislative proposal which will include:
 - \$200 million for a Certificate Program Support Fund to provide school districts with an incentive to allow parents to choose the public or private schools their children will attend.
 - New authority to fund Magnet Schools of Excellence in order to extend this proven choice approach to schools regardless of racial composition or the presence of a school desegregation plan. Support for magnet schools for desegregation will be maintained as well.
 - Amendments to facilitate and increase use of Local Agency Grants and Education Block Grants under Chapters 1 and 2 of the Elementary and Secondary Education Act for educational choice programs.
 - \$30 million to fund nationally significant choice demonstrations.
- o **Housing Choice:** For 1992, \$2.4 billion is requested to provide an additional 78,860 housing vouchers to low-income renters. This 41 percent funding increase over tenant-based housing subsidies appropriated for 1991 reflects the Administration's policy of assuring subsidized tenants maximum choice over where to live and how much to pay for housing.
- o **Homeownership:** Opportunity for low-income families to become homeowners will be expanded through HOPE (Homeownership and Opportunity for People Everywhere). For 1991, a fully-offset supplemental request for \$287 million

is proposed for HOPE; for 1992, the request is \$2.15 billion.

To preserve those subsidized rental properties that may be converted to other uses, \$718 million is requested. The goals are to protect low-income renters, provide opportunities for low-income tenants to become homeowners, and compensate owners fairly to retain their properties as low-income rental units.

To reduce defaults and improve housing conditions for low-income renters in financially distressed, FHA-insured rental properties, a \$668 million Low-Income Resident Empowerment Program is proposed for 1992. This program will assist those landlords who are willing to provide their low-income tenants an equity interest in their units.

- o Increased Flexibility: To allow grantees to use funds more effectively: certain categorical housing programs will be replaced with more flexible HOME grants; several small categorical programs for the homeless will be consolidated; legislation will be proposed to permit waivers of some Federal education program requirements for innovative programs which can demonstrate progress toward stated educational goals.
- o Using IRAs for First Home Purchases: First-time home-buyers would be permitted to withdraw up to \$10,000 from tax-deferred IRAs without penalty for a down payment.
- o Enterprise Zones: To help revitalize economically distressed communities, the budget includes proposals for Federal tax incentives in up to 50 enterprise zones. A 5 percent refundable tax credit for low-income workers, favorable tax treatment for purchase of newly issued corporate stock in enterprise zones, and a zero capital gains rate for investments in zone businesses are proposed.
- o Job Training: Reforms to the \$4.0 billion Job Training Partnership Act (JTPA) are proposed to target job training efforts on extremely disadvantaged adults and youth. Included is a new Youth Opportunities Unlimited (YOU) program in up to 40 high-poverty areas. Reforms of the Federal-State Employment Service also are intended to target resources on more disadvantaged workers.
- o Reform of Davis-Bacon: Recently issued Labor Department regulations would improve opportunities on Federal construction projects for workers still learning their journeyman skills and create another rung on the ladder to economic success for less-skilled workers. The threshold for application of the Davis-Bacon Act wage level provisions

for Federal construction projects would be raised to \$250,000 from the present \$2,000., a ceiling which has not been raised since it was imposed in 1935.

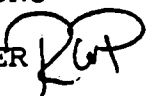
- o Social Security Earnings Test: A modest liberalization is proposed for the Social Security earnings test, which reduces retirement benefits to aged recipients after their earnings reach a specified amount in any year. For 1992, the amount of earnings recipients are allowed before their benefits are affected would be increased 8 percent, to \$11,000.

THE WHITE HOUSE

WASHINGTON

January 11, 1991

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: RICHARD PORTER 

SUBJECT: Civil Rights

As you requested, I checked with Bill Diefenderfer and Tom Scully to determine which "empowerment" ideas are in the FY '92 budget. The following items are either in the budget or they don't cost any money and are consistent with the budget:

- 1) Fund HOPE
- 2) Promote Educational Choice
- 3) Repropose Flexibility Legislation
- 4) Job Training in Public Housing
- 5) Create Enterprise Zones
- 6) Reform Davis-Bacon
- 7) SBA Initiatives
- 8) Revamp the Public Employment Service
- 9) Create Empowerment Opportunity Areas

We are revising the empowerment memo for the President to conform with budget policy.

I have also corrected the chart organizing the initiatives by committee assignment. Note that this chart includes the Crime Bill and the Indian initiative, which were not developed by the Economic Empowerment Working Group. A copy is attached for your review.

Attachment

Fund HOPE

Senate
Appropriations

Byrd (D)
Hatfield (R)

HUD - Independent
Agencies

SBA Initiatives

Senate Small
Business

Bumpers (D)
Kasten (R)

Urban & Minority
Owned Business
Development

Crime Bill

Senate Judiciary

Biden (D)
Thurmond (R)

Various
subcommittees

Indian Empowerment

Senate Indian
Affairs

Inouye (D)
McCain (R)

HOUSE COMMITTEE ASSIGNMENTS

<u>Issue</u>	<u>Committee</u>	<u>Leadership</u>	<u>Subcommittee</u>
Promote Educational Choice	House Education & Labor	Ford (D) Goodling (R)	Elementary, Secondary & Vocational Education
Educational Flexibility	House Education & Labor	Ford (D) Goodling (R)	Elementary, Secondary & Vocational Education
Revamp Employment Service	House Education & Labor	Ford (D) Goodling (R)	Employment Opportunity
Job Training for Public Housing Residents	House Education & Labor	Ford (D) Goodling (R)	Employment Opportunity
	House Banking, Finance & Urban Affairs	Gonzalez (D) Wylie (R)	Housing & Community Development
Reform Davis-Bacon	House Education & Labor	Ford (D) Goodling (R)	Labor Standards
Civil Rights	House Education & Labor	Ford (D) Goodling (R)	
	House Judiciary	Brooks (D) Fish (R)	Civil & Constitutional Rights
Enterprise Zones	House Ways & Means	Rostenkowski (D) Archer (R)	
Empowerment Opportunity Areas	House Education & Labor	Ford (D) Goodling (R)	

Empowerment
Opportunity Areas

House Ways & Means

Rostenkowski (D)
Archer (R)

Fund HOPE

House
Appropriations

Whitten (D)
Core (R)

HUD - Independent
Agencies

SBA Initiatives

House Small
Business

LaFalce (D)
McDade (R)

SBA & the General
Economy & Minority
Enterprise
Development

Crime Bill

House Judiciary

Brooks (D)
Fish (R)

Various
Subcommittees

Indian Empowerment

House Interior &
Insular Affairs

Udall (D)
Young (R)