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105TH CONGRESS, 2nd Session | HOUSE OF REPRESENTATIVES | REPORT 105–439

CIVIL RIGHTS COMMISSION ACT OF 1998

MARCH 12, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY of Florida, from the Committee on the Judiciary, submitted the following

R E P O R T

ADDITIONAL VIEWS

[To accompany H.R. 3117]

[Including cost estimate of the Congressional Budget Office]

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

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The amendment is as follows:

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

SECTION 1. SHORT TITLE.

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

SEC. 2. EXTENSION AND AUTHORIZATION OF APPROPRIATIONS.

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

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

SEC. 3. STAFF DIRECTOR.

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

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

"(A) IN GENERAL.—There shall";

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

"(i)";

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

"(ii)"; and

(4) by adding at the end the following:

"(B) TERM OF OFFICE.—The term of office of the Staff Director shall be 4 years.

"(C) REVIEW AND RETENTION.—The Commission shall annually review the performance of the staff director.".

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

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

"(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.—The Commission shall be considered to be an agency, as defined in section 551(1) of title 5, United States Code, for the purposes of sections 552, 552a, and 552b of title 5, United States Code, and for the purposes of the Federal Advisory Committee Act.".

SEC. 5. REQUIREMENT FOR INDEPENDENT AUDIT.

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

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

SEC. 6. TERMS OF MEMBERS.

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

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

SEC. 7. REPORTS.

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

SEC. 8. SPECIFIC DIRECTIONS TO THE COMMISSION.

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

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

(c) RELIGIOUS FREEDOM IN PUBLIC SCHOOLS.—

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

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

(3) DESCRIPTION OF RIGHTS.—Such report shall also include a description of—

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

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

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

(d) CRISIS OF YOUNG AFRICAN-AMERICAN MALES REPORT.—Not later than September 30, 1999, the Commission shall submit a report on the crisis of young African-American males.

(e) FAIR EMPLOYMENT LAW ENFORCEMENT REPORT.—Not later than September 30, 1999, the Commission shall submit a report on fair employment law enforcement.

(f) REGULATORY OBSTACLES CONFRONTING MINORITY ENTREPRENEURS.—Not later than September 30, 1999, the Commission shall develop and carry out a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs, and report the results of such study under section 3 of the Civil Rights Commission Act of 1983.

SEC. 9. ADVISORY COMMITTEES.

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

PURPOSE AND SUMMARY

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

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

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

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

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

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

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

BACKGROUND AND NEED FOR THE LEGISLATION

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

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

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

The Commission's duties include: (1) investigating claims of voting rights deprivation because of color, race, religion, sex, age disability, or national origin, as well as any pattern or practice of fraud; (2) studying and collecting information concerning legal developments constituting discrimination or denial of equal protection because of race, color, religion, sex, age, handicap, or national origin; (3) appraising laws and policies of the Federal Government with respect to discrimination or denial of equal protection; (4) serving as a national clearinghouse for information with respect to

the above; and (5) preparing public service announcements and advertising campaigns to discourage discrimination and denials of equal protection. (42 U.S.C. section 1975a.)

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

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

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

GENERAL ACCOUNTING OFFICE REPORT

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

In violation of relevant federal statute, the Commission has failed to update obsolete documentation explaining its purpose, leaving "the public and Commission employees unsure of the agency's procedures and processes for carrying out its mission." (*Id.*) Accordingly, H.R. 3117 requires the Commission to implement GAO's recommendations regarding revision of the Commission's administrative instructions and structural regulations to reflect the current agency structure, so that the public is better informed of the Commission's structure and organization. In addition, H.R. 3117 applies the Freedom of Information, Privacy, Sunshine, and Advisory Committee Acts to the Commission. These important laws are designed to ensure that government conducts its operations in the spirit of openness, and respect for the public's right to know about, and participate in, the work of their government. Application of these laws to the Commission could enhance its responsiveness and relevance to the American people and their daily lives.

GAO

" STATES REPEATEDLY IN THE REPORT THAT IT COULD NOT CONDUCT A COMPLETE REVIEW IN MOST AREAS BECAUSE KEY COMMISSION RECORDS WERE "LOST, MISPLACED OR NONEXISTENT," (*id.* at 7,) or "misplaced, misfiled, or not available for review," (*id.* at 10, 19.) furthermore, "[t]he commission's management controls over its operations are weak and do not ensure that the commission is able to meet its statutory responsibilities or its program objectives." (*id.* at 11.) the legislation responds to this deficiency by requiring the commission to establish a management information system to enhance the oversight and project efficiency of the commission.

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

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

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

GAO confirms that completion of the Commission's reports is plagued by delay, which adversely effects the reports' quality, usefulness, and relevance. The lengthy time frame for completion of projects yields them useless and obsolete in many cases. (*Id.* at 15–18.) In addition to the time delays, projects suffer from quality problems in planning and implementation as well. (*Id.* at 18.) The Commission has a problem with communications among its own offices and officials, and this lack of coordination renders their efforts duplicative. (*Id.* at 19–20 ("With no coordination among the offices, duplicate mailings are likely.").) For example, the Commission's report on ethnic tensions in Los Angeles omits any discussion or consideration of the riots following the Rodney King verdict, certainly a significant event on racial tensions in the Los Angeles area.

To respond to this problem, H.R. 3117 sets forth selected projects, with specific deadlines, for the Commission to complete. All of these projects have been independently selected as priorities by the Commission itself. Current statute provides that Congress may require the Commission to submit reports as Congress "shall

deem appropriate." (42 U.S.C. section 1975a(c)(2).) At certain points in the Commission's history Congress has identified specific projects it has required the Commission to complete. (*See, e.g.,* Civil Rights Commission Act of 1979, P.L. 96–81 (Commission shall submit report to Congress regarding laws and policies of federal government that deny equal protection to Americans who are members of eastern- and southern-European ethnic groups, including an analysis of adverse consequences of affirmative action programs); Civil Rights Commission Amendments Act of 1994, P.L. 103–419 (Commission shall submit at least one report annually to President and Congress that monitors civil rights enforcement efforts in the United States).) It is hoped that this statutory requirement will assist the Commission to effectively focus its resources on the completion of projects and studies in a more timely manner.

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

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

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

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

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

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

OPM REPORT

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

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

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

Like GAO, OPM identified problems with the Commission's performance management system. OPM stated that "[t]he results of the OPM questionnaire and interviews reveal a highly negative perception on the part of managers and employees regarding the organizational climate of the agency. Morale is low, and effective communication is practically non-existent. The degree of unfavorable responses *far exceeds that of any agency in the OPM questionnaire data base.*" (OPM Report at 2 (emphasis added).) H.R. 3117 is designed to help correct this problem by requiring the Commission to implement GAO's recommendations with regard to its management information system.

COMMISSION GENERAL COUNSEL'S TEACHING ARRANGEMENT

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

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

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

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

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

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

> Rep. Hutchinson: "It is my understanding from your testimony thus far that you were aware from the very beginning—in fact, you recommended Stephanie Moore for this teaching position."
>
> Berry: "No. I said she had indicated that she would like to do it, and I suggested she talk to the Staff Director about whether it could be done without conflicting with her duties."

(Unedited Transcript, lines 2224–2231.)

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

> "I go on leave whenever I want as a term of my employment, and then *I bring young scholars who want to do some teaching in* to teach courses, and we pay them. . . . [E]mployees [of the Commission] are encouraged to teach by the regulations if it can be done. I said that if the general counsel wanted to ask the Staff Director, if you get the Staff Director's approval and the Office of Ethics approval, but if it interferes with your work, *I am going to make you quit and you can t do it* and I am going to be asking if it interferes."

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

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

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

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

As a result of this peculiar arrangement, the Chairman of the Subcommittee requested that the Office of Special Investigations of the General Accounting Office undertake a detailed investigation of this matter. That investigation is ongoing. However, General Counsel Stephanie Moore and former Staff Director Mary Mathews have both refused to cooperate with GAO's investigation. Ms. Mathews has failed to respond to GAO's numerous requests for interviews, and Stephanie Moore has insisted on communicating with GAO only in writing, and then only through her private attorney.

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

The response to GAO's investigation of this teaching arrangement continues a consistent pattern of secrecy in Commission dealings. Much of the Commission's internal operations are conducted

outside of the public eye. H.R. 3117 applies the federal Freedom of Information, and Sunshine Acts to the Commission, which could help ensure that the operations of the Commission are held to greater public scrutiny. In addition, H.R. 3117's requirement of an independent audit of the Commission could also expose inefficiencies within the Commission, and empower it to more directly focus on its core mission.

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

FAILURE TO COMPLETE REPORTS

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

GAO confirms this assessment. "Projects embody one of the key components of the Commission's operations yet the management of projects is weak or nonexistent." (GAO Report at 20.) The Commission's projects, the principal rationale for its existence, consume approximately only 10% of its overall budget. (*Id.* at 14.) GAO confirms that completion of the Commission's reports is plagued by delay, which adversely effects the reports' quality, usefulness, and relevance. (*Id.* at 15–18.) In addition to the time delays, projects suffer from quality problems in planning and implementation as well. (*Id.* at 18.) The Commission has a problem with communications among its own offices and officials, and this lack of coordination renders their efforts duplicative. (*Id.* at 19–20.) During fiscal years 1993–1996, the Commission completed five projects, and deferred completion of seventeen projects. (*Id.* At 13–14, Tables 3–4.)

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

In Fiscal Year 1995, the Commission has failed to comply with its most basic statutory mandate that it submit to Congress at

least one report every fiscal year that monitors federal civil rights enforcement in the United States. (42 U.S.C. 1975a.)

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

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

COMMISSION ABUSE OF SUBPOENA POWER

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

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

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

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

Under Commission policy, the staff had the primary role in selecting who to subpoena and preparing the subpoenas for the signature of the Chair. The Commissioners had no knowledge of the circumstances surrounding the issuance of the subpoenas in question. Staff Director Mathews failed to inform even Chairperson Berry—who signed the subpoenas and under whose authority they are served by United States Marshals—that Florida Congressman

Mark Foley had written the Staff Director expressing concern that his constituent was being harassed by Commission attorneys and that her civil rights were being violated. In response, H.R. 3117 makes the Staff Director directly accountable to the Commission by requiring an annual review of the Staff Director by the Commissioners.

VOTING IRREGULARITIES

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

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

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

HEARINGS

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

COMMITTEE CONSIDERATION

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

VOTES OF THE COMMITTEE

There were no recorded votes of the committee.

COMMITTEE OVERSIGHT FINDINGS

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

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

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

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 9, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3117, the Civil rights Commission Act of 1998.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.
Ranking Minority Member.

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

Summary

H.R. 3117 would authorize the appropriation of such sums as may be necessary for the United States Commission on Civil Rights

for fiscal years 1999 through 2001. The bill also would direct the commission to undertake several new initiatives with potential budgetary impacts. These initiatives include an independent audit of the commission's annual financial statement and studies on the enforcement of fair employment laws and on regulatory obstacles confronting minority entrepreneurs. The studies would be due by September 30, 1999.

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

Estimated Cost to the Federal Government

For the purposes of this estimate, CBO assumes that the amounts estimated to be authorized by the bill will be appropriated by the start of each fiscal year and that outlays will follow the historical spending rate for the commission. Because H.R. 3117 would authorize such sums as necessary for the commission, CBO prepared two sets of estimated authorization levels, representing continued funding at current levels of appropriations, both with and without adjustment for anticipated inflation. Both spending paths include estimated additional costs for the bill's directives to the commission, about $1 million in fiscal year 1999 and less than $500,000 in each of the following years. The commission received an appropriation of $8.74 million in fiscal year 1998 and has requested $11 million for fiscal year 1999.

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

[By Fiscal Year, In Millions Of Dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law						
Budget Authority [1]	9	0	0	0	0	0
Estimated Outlays	9	0	0	0	0	0
Without Adjustment for Inflation						
Proposed Changes						
Estimated Authorization Level	0	10	9	9	0	0
Estimated Outlays	0	9	9	9	0	0
Spending Under H.R. 3117						
Estimated Authorization Level [1]	9	10	9	9	0	0
Estimated Outlays	9	9	9	9	0	0
With Adjustment for Inflation						
Proposed Changes						
Estimated Authorization Level	0	10	10	10	0	0
Estimated Outlays	0	10	10	10	0	0
Spending Under H.R. 3117						
Estimated Authorization Level [1]	9	10	10	10	0	0

[By Fiscal Year, In Millions Of Dollars]

	1998	1999	2000	2001	2002	2003
Estimated Outlays	9	10	10	10	0	0

[1] The 1998 level is the amount appropriated for that year.

Pay-As-You-Go Considerations:

None.

Intergovernmental and Private-Sector Impact

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

Estimate Prepared By:

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

Estimate Approved By:

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

CONSTITUTIONAL AUTHORITY STATEMENT

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

SECTION-BY-SECTION ANALYSIS

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

Section 1. Short Title.

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

Section 2. Extension and Authorization of Appropriations.

Extends the statutory authorization of the Commission until September 30, 2001, and authorizes to be appropriated such funds as may be necessary to carry out the Act through fiscal year 2001.

The Commission is currently operating without statutory authorization.

Section 3. Staff Director.

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

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

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

Section 5. Requirement for Independent Audit.

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

Section 6. Terms of Members.

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

Section 7. Reports.

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

Section 8. Specific Directions to the Commission.

Requires the Commission to implement the General Accounting Office recommendations regarding revision of the Commission's Administrative Instructions and structural regulations to reflect the current agency structure, and to establish a management information system to enhance the oversight and project efficiency of the Commission. Requires the Commission to complete its report regarding the enforcement of the Americans with Disabilities Act of 1990. Requires the Commission to complete a report regarding reli-

gious freedom in schools. Requires the Commission to complete its report on the crisis of young African-American males. Requires the Commission to develop and carry out a study on the civil rights implications of regulatory obstacles confronting minority entrepreneurs.

Section 9. Advisory Committees.

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

CIVIL RIGHTS COMMISSION ACT OF 1983

* * * * * * *

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) * * *

* * * * * * *

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

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SEC. 3. DUTIES OF THE COMMISSION.

(a) * * *

* * * * * * *

(c) REPORTS.—

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

* * * * * * *

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

Commission shall be fairly balanced as to the viewpoints represented.

* * * * * * *

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) STAFF.—

(1) DIRECTOR.—[There shall]

(A) IN GENERAL.—There shall be a full-time staff director for the Commission who shall—

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

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

(B) TERM OF OFFICE.—The term of office of the Staff Director shall be 4 years.

(C) REVIEW AND RETENTION.—The Commission shall annually review the performance of the staff director.

* * * * * * *

(f) APPLICATION OF CERTAIN PROVISIONS OF LAW.—The Commission shall be considered to be an agency, as defined in section 551(1) of title 5, United States Code, for the purposes of sections 552, 552a, and 552b of title 5, United States Code, and for the purposes of the Federal Advisory Committee Act.

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

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 6. TERMINATION.

This Act shall terminate on September 30, [1996] *2001.*

ADDITIONAL VIEWS ON H.R. 3117

REAUTHORIZATION OF THE U.S. COMMISSION ON CIVIL RIGHTS

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

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

Moreover, there is no indication that the Majority is prepared to support increased funding for the Commission as requested in the President's fiscal year 1999 Budget. The Majority remains noncommittal on the appropriateness of the President's request of $11 million funding request. However, each year, the Congress continues to underfund the Commission. Last year, the Commission requested $11 million, but was only appropriated $8.75 million. While increased Congressional oversight over the Commission may be warranted, it is unreasonable for the Committee to place additional burdens on the Commission and yet continue to overlook the need for full funding of the Commission. It is wholly unfair to the Commission—and to the American people who expect and deserve a strong federal role to combat discrimination—to have the Commission constantly under the obligation of responding to the many requests made by the Majority and others, but without any provision for the funds necessary to perform its duties effectively.

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

JOHN CONYERS,
RANKING MEMBER.

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