LEADERSHIP CONFERENCE EDUCATION FUND

CIVIL RIGHTS MONITOR

vol. 1, no. 2 OCTOBER 1985

IN BRIEF...

The October issue of the CIVIL RIGHTS MONITOR focuses on the Administration's Efforts to gut Executive Order 11246 on Affirmative Action (pages 1-5). Justice Department attempts to undermine the Voting Rights Act are documented in our second feature on the Thornburg v. Gingles case currently before the Supreme Court (pages 5-7). Over the next year, each issue of the Monitor will highlight an issue of particular concern to women. This feature will be written by Karen Keegan, a Women's Legal Fellow working with the Leadership Conference on Civil Rights under the Georgetown University Law Center Women's Law and Public Policy Fellowship Program, which is funded by the Revson Foundation. Karen discusses The Parental and Disability Leave Act of 1985 (H.R. 2020) on pages 8-9. The nondiscrimination provisions of immigration reform are outlined on pages 7-8. Updates on the Civil Rights Restoration Act of 1985, and the Federal Equitable Pay Practices Act are provided on pages 9 and 10. Finally, the work of LCCR's Task Forces is outlined on page 11.

THE ADMINISTRATION'S ANTI-AFFIRMATIVE ACTION CAMPAIGN CONTINUES

With their campaign well underway in the courts to overturn consent decrees that call for race-conscious hiring and promotions, Attorney General Edwin Meese and Assistant Attorney General for Civil Rights Bradford Reynolds in August opened a new front, an assault on affirmative action required of government contractors by Executive Order 11246.

Background

E.O. 11246 is the most recent in a series of executive orders which since 1941 have imposed nondiscrimination requirements and since 1961 have required affirmative action in the employment practices of contractors and subcontractors of the Federal Government. This federal commitment to affirmative action has been developed and supported by eight Republican and Democratic Administrations over the past forty-four years. Executive Order 11246, signed by President Johnson in 1965, and amended two years later states:

> The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.

Initially, affirmative action was not defined precisely and it has evolved with experience. In 1967, the Director of the Office of Contract Compliance (OFCCP) in the Department of Labor, responsible for administering the program, offered the following definition:

> There is no fixed and firm definition of affirmative action. I would say that in a general way, affirmative action is anything that you have to do to get results ... Affirmative action is really designed to get employers to apply the same kind of imagination and ingenuity that they apply to any other phase of their operation.

Another definition, offered by the U.S. Commission on Civil Rights in 1977 was that the term

"encompasses any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from reoccurring in the future."

In 1965, after lesser affirmative action measures had failed to produce change, OFCCP established a series of special area programs to "assure minority group representation in all construction trades and in all phases of the work." Perhaps most well known is the Philadelphia plan. Established in 1967 and revised in 1969, it required that bidders for federal or federally assisted construction contracts submit goals for minority employee utilization and commit themselves to make "good faith" efforts to achieve such goals. The first regulations to implement Executive Order 11246 for non-construction contractors were issued in May 1968 and required that specific steps be taken by federal contractors in all their establishments. These steps were detailed in Order No. 4, an OFCCP instruction to the contracting agencies. During the Nixon Administration, Secretary of Labor George Schultz in 1970 issued a second set of regulations which were again revised in 1971. Referred to as Revised Order No. 4 it sets forth the procedures contractors must follow to comply with E.O. 11246. Still in effect today, it requires federal contractors to undertake an availability analysis to determine if there are fewer women or minorities in their employ than would be expected according to their availability for work. If this analysis reveals an underutilization of minorities and women, the contractor is required to develop measurable goals and timetables and make a good faith attempt to meet these targets. It is important to note that the order specifically states:

> Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

The Proposed New Executive Order

The Administration has drafted a new executive order that would effectively gut 11246 and the long-standing requirement that the tens of thousands of employers awarded federal contracts must take positive steps to include qualified minorities and women in their workforce. The draft executive order would make four major changes in the existing contract compliance program. It would:

1. prohibit the government from seeking to have contractors adopt affirmative action plans that include numerical goals and timetables.

2. bar consideration of statistical evidence no matter how compelling and no matter how great the weight courts would give to such proof. The Labor Department would thus be required to ignore facts that courts and ordinary citizens understand are very relevant in determining the existence of discrimination.

3. restrict coverage to "demonstrated discriminatory treatment." This language coupled with the statistical evidence restriction would limit the reach of the Executive Order to blatant, overt acts of discrimination which rarely occur today.

4. provide a disincentive for voluntary action by companies by asserting that the executive order does not provide a legal basis for contractors to use goals and timetables even for training. A company could not rely on its legal obligations under the E.O. as a justification for the adoption of a voluntary plan. Voluntary compliance would be discouraged instead of encouraged.

Approximately three weeks after the proposed new executive order surfaced, it was reported that the Administration was considering a revision which would modify number 4 above. Described as a compromise, the revision would allow contractors to set goals and timetables voluntarily. However, a Justice Department official was quoted as saying that the DOJ might side with complainants, presumably white males, who brought a case against a contractor who instituted goals and timetables. A more accurate quote from the Administration might be: "We're not going

to tell you in the executive order that you can not establish voluntary goals and timetables, but if you do we will help others to sue you."

The debate within the Administration has Meese, Reynolds and Patrick Buchanan on one side, and Secretary of Labor William Brock and several other cabinet officials on the other side. Secretary Brock has expressed support for affirmative action and has made the distinction between quotas and goals and timetables, expressing support for the latter. This Administration as well as other opponents of affirmative action prefer to cloud the issue by using the terms interchangeably. This lessens the opportunity for effective debate on the merits of goals and timetables because of the historical connotation of quotas which arouses great emotion i.e., an exclusionary limit directed against a disadvantaged group. In contrast, a goal is a numerically expressed estimate of the number or percentage of new employees who will belong to a certain class, for example, black or female. Typically, an employer undertaking affirmative action establishes an ultimate employment goal, for instance, that 10 percent of its workforce will be black, and a projected timetable for achieving that goal e.g., 5 years.

The Response

The Administration's attack on goals and timetables has drawn strong criticism not just from civil rights groups, but from business and trade union leaders.

The Leadership Conference on Civil Rights along with numerous organizations has expressed outrage. On September 12, 1985 the Executive Board of LCCR issued a statement calling the Administration's efforts an assault on equal opportunity for all American workers. Further, the statement said that "provisions in the Administration's draft to bar the use of statistical evidence as a gauge of discrimination would strip civil rights enforcement of a vital tool that has been used by the courts for 50 years." The American Jewish Congress in a letter to President Reagan stated that while the AJC is firmly opposed to quotas, except as a remedy for "proven discrimination," it views goals as a guide to measure "good faith" efforts of an employer. Further, the letter stated "...rather than eliminating goals and timetables which have proven effective benchmarks for determining civil rights compliance and have been successful in increasing employment of these historically disadvantaged groups, we urge you to police the enforcement of such statistical devices." Claudia Withers, Staff Attorney with the Women's Legal Defense Fund, in testimony before the House Subcommittee on Employment Opportunities stated that while the Women's Legal Defense Fund has "legitimate concerns about the current enforcement of Executive Order 11246, as amended, we oppose any attempts to revise the Executive Order itself. The contract compliance program, vigorously enforced and effectively targetted, has brought about positive changes in the employment status of women and minority men. It is obvious, however, that much remains to be done. We believe that OFCCP should vigorously enforce the contract compliance program in order to achieve the goal of equal employment opportunity."

The corporate community's reaction was reported in the September 16, 1985 issue of Fortune Magazine:

> If the Reagan Administration warriors taking shots at affirmative action think business is on their side, they are in for unpleasant surprises ... persuasive evidence indicates that most large corporations want to retain their affirmative action programs, numerical goals and all.

John L. Hulck, chairman of Merck, as quoted in the article: "We will continue goals and timetables no matter what the government does. They are part of our culture and corporate procedures." Moreover, the concern has been expressed that by eliminating the federal requirements companies may be more vulnerable to legal action. "Employees are likely to be less patient with a voluntary program than a program operating under government rules and scrutiny... Employers could be dragged through a new round of Title VII cases brought by employees, including white males, who consider themselves discriminated against."

The AFL-CIO Executive Council issued a statement strongly opposing efforts to repeal the Executive Order. AFL-CIO reaffirmed its long-standing support for affirmative action, and urged the Administration "to cease its constant search for ways to weaken the nation's civil rights laws, and instead to commit itself to enforcing those laws vigorously and effectively."

Members of Congress have expressed their concern over Administration actions. During hearings before the House Subcommittee on Employment Opportunities, Representatives Paul B. Henry (R-Mich) and James M. Jeffords (R-VT) queried the new Director of OFCCP, Joe N. Cooper, and the Deputy Under Secretary, Susan R. Meisinger, on how compliance can be measured in any meaningful manner without goals and timetables, stating that without the tools of compliance, compliance becomes arbitrary. Further, a bipartisan group of Representatives and Senators in a letter to the President objected to the Administration's efforts to dismantle the affirmative action program. "The fundamental principle underlying Executive Order 11246 is that federal monies must not be used to subsidize discrimination and that the privilege of doing business with the Federal Government entails certain special responsibilities... By eliminating the use of goals, timetables and statistics to remedy the effects of discrimination, the Federal Government will be dramatically retreating from this principle." If the Administration modifies the executive order, civil rights advocates will turn to the Congress for codification of the existing executive order. Such legislation has already been drafted by a bipartisan group of House and Senate members.

Unfortunately, the Administration's attack on affirmative action will not end here. On September 18, 1985 in remarks before the National Construction Industry Council, Reynolds expressed objection to the Federal Government's business set-aside programs which seek to insure that a certain percentage of government procurement dollars are spent in acquiring goods and services from minority and female owned companies. The purpose of such programs is "to assist small concerns owned by disadvantaged persons to become self-sufficient, viable businesses capable of competing effectively in the market place." The Assistant Attorney General strongly opposes such set-asides. Additionally, civil rights advocates are anticipating repeal of the Uniform Guidelines on Employee Selection Procedures by the Equal Employment Opportunity Commission in the early part of 1986. These guidelines, adopted by EEOC and four other federal agencies in 1978, provide standards and guidance to employees on how to comply with Title VII (employment discrimination) of the Civil Rights Act of 1964. The guidelines provide in part that:

> The use of any selection procedure which has an adverse impact on the hiring, promotion or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines.

Under the guidelines, as Alfred W. Blumrosen, Professor of Law at Rutgers, testified before the House Subcommittee on Employment Opportunities (Oct. 2, 1985) one must examine the results of selection standards and "if those results are similar to results which would be produced by policies of restriction or exclusion of minorities or women, they are suspect." He continued "They can be justified if they are necessary to the safe and efficient operation of the business... But if the standards are not necessary, minorities or women should not be excluded from those job opportunities at higher rates than white males." Clarence Thomas, Chair of the Equal Employment Opportunity Commission, has stated that he intends to pursue a revision of the Uniform Guidelines because they are based on the premise that statistical disparities reflect discrimination, and assume the inherent inferiority of blacks, Hispanics, other minorities, and women by not holding them to the same standards. Supporters of the Guidelines counter by stating that for fifty years, the Supreme Court has made it clear that statistical evidence can be used to show discrimination or disparate impact. The burden then shifts to the employer to show that the standard in question is job related (see testimony of Lawyers Committee for Civil Rights Under Law before the House Subcommittee on Employment Opportunities, October 2, 1985). Moreover, the Guidelines carry out Title VII in a manner required by the unanimous decision of the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971). The court interpreted Title VII "to invalidate general intelligence tests and other criteria for employment that disproportionately excluded minorities,

because these selection devices were not shown to be dictated by business necessity" (U.S. Commission on Civil Rights, Affirmative Action in the 1980's: Dismantling the Process of Discrimination (Nov. 1981)). Secondly, supporters state that the guidelines do not assume inherent inferiority, but recognize that a "condition of inequality has been imposed on minorities and women through a history of slavery, subordination, and discrimination. The Guidelines seek to prevent "the maintenance of that subordination under the guise of 'neutrality,' absent business necessity" (see Blumrosen testimony). More on EEOC and the Uniform Guidelines in the December CIVIL RIGHTS MONITOR.

Although facing opposition on the Executive Order from civil rights groups, unions, large segments of the corporate community and legislators of both parties, the Administration appears to be plunging ahead. Meese and Reynolds have ignored pratical experience and public sentiment in the past (e.g. on the Bob Jones case and the Voting Rights Act) and word from Administration sources has it that they do not believe they will pay too heavy a political price by gutting the Executive Order.

A number of organizations are closely monitoring the executive order on affirmative action and have prepared resource materials which are available for further information. Available from the Lawyers' Committee For Civil Rights Under Law, Suite 400, 1400 Eye Street, N.W., Washington, D.C. 20005: The Draft Executive Order: Will The Reagan Administration Abandon The Historic Commitment To Affirmative Action By Government Contractors?, (August 1985) 24 pages, $4.00, and Legal Materials for Use in Fighting DOJ's Assault on Affirmative Action (April 1985) 336 pages, $25.00. Available from the Citizens' Commission on Civil Rights, 1025 Vermont Ave., N.W., Suite 360, Washington, D.C. 20005: Affirmative Action to Open the Doors of Job Opportunity (June 1984) 216 pages, $10.00. Available from the Potomac Institute, 1501 18th Street, N.W., Washington, D.C. 20036: A Decade of New Opportunity: Affirmative Action in the 1970's (Oct. 1984) by Herbert Hammerman, 100 pages, $6.00.

DEPARTMENT OF JUSTICE ATTEMPTS TO WEAKEN THE VOTING RIGHTS ACT

A case presently before the Supreme Court, Thornburg v. Gingles could determine whether Congress' 1982 amendment to Section 2 of the Voting Rights Act "is preserved as an effective mechanism to ensure that people of all races will be accorded an equal opportunity to participate in the political processes of this country and in the election of representatives of their choice" (see Brief of Senators Dennis DeConcini, et al, as amici curiae in support of Appellees, No. 83-1968, (U.S. filed, Aug. 30, 1985)). This Administration, which opposed Congressional efforts in 1982 to strengthen the Voting Rights Act -- acquiescing only when it became apparent that a Presidential veto would be overridden -- is now attempting to do in court what it couldn't do in Congress, weaken the Voting Rights Act. Moreover, the congressional authors of the bill, five Republicans and five Democrats, including Senate Majority Leader Robert Dole, have stated in a brief filed before the Supreme Court that the DOJ's position "was expressly rejected by Congress." Interestingly, the Republican National Committee and the Republican Governor of North Carolina James G. Martin have also filed separate briefs opposing the Administration's position.

Background

In 1980, the Supreme Court ruled in City of Mobile v. Bolden 446 U.S. 55 (1980) that to prove voting discrimination, proof of racially discriminatory intent or purpose is necessary. The fact that a particular voting practice (in this case at-large elections of city commissioners) resulted in minorities not being able to exercise effectively their right to vote was found not to be in violation of the equal protection clause of the fourteenth amendment.

In response to the Mobile decision, both Houses of Congress in passing the Voting Rights Act Amendments sought "to reinstate fair and effective standards for enforcing the rights of minority citizens." The section 2 amendment and the legislative history clearly established that local election practices can be found to be discriminatory, if the results of such practices negatively

impact on black voters. Thus, the amendment eliminated the intent test the Supreme Court required in Mobile.

The Gingles case

In 1981, the North Carolina General Assembly enacted redistricting plans for both Houses of the State legislature. The redistricting was challenged in court, in part, because the system of electing several legislators from a single district diluted black voting strength. It was alleged that concentrations of black voters had been engulfed by large concentrations of white voters thus diluting the ability of black citizens to elect representatives of their own choice. In another area, the plan fractured into separate voting minorities a concentration of black voters. The three-judge district court found that the State's large multi-member districts diluted minority voting strength in some areas, Gingles v. Edmisten 590 F. Supp. 345 (1984). The opinion states: "the fundamental purpose of the amendment to Section 2 was to remove intent as a necessary element of racial vote dilution claims brought under the statute" (590 F. Supp. at 353). Further, the opinion reasons that in determining whether an election device results in racial vote dilution, the Congress intended that courts look at historical, social and political factors in proving dilution. Specifically, the court found:

-a high degree of racially polarized or bloc voting, such that in all districts a majority of the white voters never voted for any black candidate.

-a history of official discrimination against blacks in voting matters -- including the use of devices such as a poll tax, a literacy test, and an anti-single-shot voting law (requiring voters to vote a full slate of candidates or have their ballots invalidated). Although these devices were no longer employed by the early 1970's, the court recognized that their existence for over half a century has had a lasting impact.

-the majority vote requirement in primaries -- because of the historical domination of the Democratic party -- substantially impeded minority voters from electing candidates of their choice.

-that from the Reconstruction era to the present time, appeals to racial prejudice against black citizens have been effectively used by persons, either candidates or their supporters, as a means of influencing voters in North Carolina political campaigns.

-that North Carolina had offered no legitimate policy justification for the form of the challenged districts.

The North Carolina State Assembly has appealed the decision and the Department of Justice has filed a friend of the court brief supporting the appeal (see Brief for the U.S. as amicus curiae supporting Appellants, No. 83-1968, (U.S. filed, Aug. 30, 1985)). DOJ's brief contends that "minority voters have no right to the creation of safe electoral districts merely because they could feasibly be drawn." Further, the brief contends that since some blacks have won under the multimember district system, "the district court erred by concluding that use of that system "results" in a denial of "equal access" to the electoral process for minorities."

...we shall argue that the trial court, by ignoring recent minority electoral successes in the districts in issue, could not reasonably have found a violation under the proper "equal opportunity to participate" standard, but rather must implicitly have sought to guarantee continued minority electoral success.

The brief of the key congressional co-sponsors of the Voting Rights Act amendment states that DOJ's position in the case "is inconsistent with the literal provisions of section 2."

The Solicitor General and appellants ask this court to rule that evidence of recent, and limited, electoral success should be preclusive of a Section 2 claim,... [T]his position is contrary to

the express terms of Section 2, which requires a comprehensive and realistic analysis of voting rights claims, and it could raise an artificial barrier to legitimate claims of denial of voting rights which in some ways would pose as significant an impediment to the enforcement of Section 2 as the specific intent rule of City of Mobile v. Bolden, 446 U.S. 55 (1980), rejected by Congress in 1982.

Further, the congressional brief notes that "the election of a few minority candidates does not 'necessarily foreclose the possibility of dilution of the black vote,' in violation of [Section 2]. If it did, the possibility exists that the majority citizens might evade the section e.g., by manipulating the election of a 'safe' minority candidate." That is, the Voting Rights Act does not simply address the election of blacks, but whether black voters can effectively exercise their right to elect the candidates of their choice. In addition, in some districts blacks could elect their candidates to office only by "single-slotting" their ballots, thus giving up their right to vote for a full slate of candidates.

Ralph G. Neas, Executive Director of the Leadership Conference on Civil Rights stated that the bipartisian support for the district court's ruling in this case shows once again the "extremism" of Attorney General Edwin Meese III and Assistant Attorney General William Bradford Reynolds and that they are isolated from the mainstream of the Republican party. Lani Guinier of the NAACP Legal Defense is representing the plaintiffs in the case. Another source for information on this case and other voting rights cases is Margaret Carey, Attorney with the Center for Constitutional Rights, 230 Main Street, P.O. Box 1835, Greenville, MS. 38702-1835.

The Administration's attempt to weaken the Voting Rights Act in court is consistent with its effort to undermine the Act through the regulatory process. As was reported in the August issue of the CIVIL RIGHTS MONITOR, the Administration has issued proposed revisions to the procedures for the administration of Section 5 of the VRA which would serve to dilute the Act. The proposed revisions have not yet been finalized and there is still time to protest this action.

IMMIGRATION REFORM SHOULD ADDRESS ANTI-DISCRIMINATION ISSUES

The push is on again to move Immigration bills to slow the entry of illegal aliens through the Congress. The bills provide a form of amnesty for illegal aliens currently in the country, differing on the length of time such persons must have resided in the United States. Further, the bills include employer sanctions -- a system for penalizing employers who knowingly hire, recruit, or refer for a fee undocumented aliens. Civil rights organizations have expressed strong support for the inclusion of anti-discrimination provisions to protect the rights and livelihoods of immigrants under any employer sanction program. Such provisions would create a form of redress for persons who experience employment discrimination under the program.

On September 11, 1985 the Leadership Conference on Civil Rights expressed dismay and disappointment that the Senate leadership had chosen to initiate debate on S. 1200, Immigration Reform and Control Act of 1985 (introduced on May 23, 1985 by Senator Simpson (R-WY)) prior to scheduled joint Senate-House hearings on the question of discrimination and appropriate remedies. Despite these expressed concerns, S.1200 passed the Senate on September 19, 1985 by a 69-30 vote.

The Senate bill provides temporary legal status for illegal aliens who have resided in the United States since January 1, 1980. Legalization will be granted only after a commission concludes that sanctions have curtailed the flow of illegal immigrants, but no more than three years after the bill is passed, regardless of the commission's findings. The bill includes an employer sanction provision and makes the system of uniform verification, inspecting and recording the work authorization documents of all hired individuals totally voluntary. However, the bill provides that establishing a "uniform verification system" would provide an affirmative defense against a charge of unlawful hiring. The bill does not provide a mechanism for addressing discrimination against Hispanics and other minorities.

Civil rights organizations and particularly Hispanic organizations have expressed grave concerns over the employer-sanction provisions calling them inherently discriminatory. They contend that alienage discrimination will increase in two ways with the implementation of employer sanctions. First the legislation would provide a pretext for employers inclined to discriminate, a defense against charges of employment discrimination. Secondly, discrimination would result from the good faith efforts of employers to comply with the law. The bill would create a "suspect class" of persons who on the basis of physical characteristics, language, skin color etc., appear to be "foreign" to employers. Employers seeking to avoid sanctions, paperwork, or disruption of their work schedules may avoid hiring Hispanics or other "foreign-looking" persons. The personnel director of a large manufacturing company stated:

> I hate to say this, but I'm sure there have been a lot of times that I've discriminated against Latinos. Sometimes you just don't have time to wait for the computer. If I have four applicants for the job, I would naturally incline toward the one that's not Latino ... Most employers would just rather play it safe than get into trouble with the INS [Immigration and Naturalization Service] (The Los Angeles Times, June 19, 1984).

In 1982, after INS country-wide raids of businesses suspected of hiring undocumented workers "some employers admitted reluctance even to take back workers who managed to prove their legal status to arresting officers."

Supporters of the employer sanction provision have maintained that discrimination can be avoided by requiring employers to inspect and record the documents of all hired individuals. It is maintained that requiring uniform verification will eliminate the possibility of employers verifying the eligibility of only "foreign looking" applicants. Opponents respond that even under a required uniform verification system, which is not part of S. 1200, the system would apply only to hirers, not to all applicants. Thus, applicants who appear foreign could be screened out before hiring occurred.

Currently, the most important legislation in the House is the Immigration Control and Legalization Amendments Act (H.R. 3080) introduced by Rep. Peter Rodino (D-N.J.) on July 25, 1985 and referred to the Judiciary. Civil rights advocates are trying to ensure that the House bill include a redress provision for persons discriminated against under the employer sanction provision, similiar to the Frank amendment which passed the House last year. Sponsored by Rep. Barney Frank (D-Mass.), the amendment would "create an anti-discrimination unit within the Justice Department special counsel to investigate and bring before an immigration judge claims of alienage and/or national origin discrimination claims." For additional information, contact Richard Fajardo of MALDEF, 1701 18th Street, N.W., Washington, D.C. 20006 or Charles Kamasaki at the National Council of La Raza, 20 F Street, N.W., 2nd floor, Washington, D.C. 20001.

JOB-PROTECTED LEAVE FOR WORKING PARENTS

The United States is the only industrialized nation without a legal entitlement to some form of maternity or temporary disability leave. At least 75 countries have paid coverage for women who leave work to have children; some even provide paid leave for new fathers. In this country, there is no consistent federal policy to deal with childbearing in the work force, even though it is estimated that 85 percent of American working women will become pregnant during their lives. What does exist is a piecemeal approach to the problem. Only forty percent of women in the U.S. work for employers who provide paid leave for the minimum six to eight week childbirth recovery period recommended by most obstetricians. Only five states, California, Hawaii, New Jersey, New York, and Rhode Island, have mandatory temporary disability insurance programs that include pregnancy. While 72 percent of employers in a 1981 survey allowed women an unpaid job-protected "maternity" leave, only 36 percent provide leave for new fathers according to a 1984 Preliminary Report by Catalyst, an organization that assists corporations in developing policies for working parents.

The Parental Disability and Leave Act of 1985 (H.R. 2020), introduced by Congresswoman Patricia

Schroeder (D-Co.) on April 4, 1985, would guarantee employees the right to take parental and temporary disability leave without losing their jobs. The Act, known as PDA II, provides for a minimum of six months of unpaid leave for pregnancy-related or other temporary medical disabilities and a minimum of four months of unpaid leave for parenting of newborns, newly-adopted children or seriously ill children. The legislation would also establish a commission to study and recommend the implementation of a national policy on paying employees during periods of parental and temporary disability leave. The bill was referred to the Committees on Education and Labor, and Post Office and Civil Service, joint oversight hearings were held on October 17, and legislative hearings will be scheduled early in 1986.

Legally, the PDA II would resolve some current problems in the interpretation of the Pregnancy Discrimination Act of 1978 (PDA). The PDA amended Title VII of the Civil Rights Act of 1964 to define sex-based employment discrimination to include pregnancy discrimination. Under the PDA, a woman who is temporarily disabled due to pregnancy or childbirth is entitled to the same benefits and leave provided to other temporarily disabled employees.

However, the PDA is solely an anti-discrimination statute; if the employer chooses to provide no benefits or leave for temporary disabilities, then similarly women are not entitled to leave or benefits. Acting to fill the gap in maternity coverage created by employers who have inadequate leave and benefit policies, a few states, including California, Connecticut and Montana, have passed protective legislation to require employers to grant pregnant women leaves of absence for childbirth.

Recently, some of these state maternity laws have been challenged as violative of the Pregnancy Discrimination Act, because, it is argued, these protective laws favor pregnant women over nonpregnant persons. The U.S. Ninth Circuit Court of Appeals recently rejected such an argument in California Federal Savings and Loan Association v. Guerra, 758 F. 2d 390 (1985). The court upheld as consistent with the PDA a California statute requiring an unpaid four-month job-protected leave for pregnancy and childbirth-related disabilities. A Montana State Supreme Court decision upholding the Montana maternity leave statute is currently on appeal in the United States Supreme Court, Miller-Wohl Co. v. Commissioner of Labor and Industry, 692 P. 2d 1243 (Mont. 1984), petition for cert. filed, 53 U.S.L.W. 2367 (U.S. Mar. 27, 1985)(No.84-1545).

By extending job-protected temporary disability leave to all employees, PDA II would eliminate some of the perceived conflicts between state protective legislation and the federal pregnancy anti-discrimination statute. In addition, by making parental leave a legal right, the new Act would establish an important new federal policy to address the needs of working parents.

Note: Unless otherwise stated, the source for the statistics in this article is Kamerman, Kahn, and Kingston, Maternity Policies and Working Women, (Columbia University Press: 1983). For further information, contact Karen Keegan at LCCR, 2027 Massachusetts Avenue, N.W., Washington, D.C. 20036, (202) 667-1780.

PAY EQUITY IN FEDERAL CIVIL SERVICE

The Federal Equitable Pay Practices Act of 1985 (H.R. 3008), introduced by Rep. Mary Rose Oakar (D-OH.) on July 16, 1985, would mandate a study of federal wage-setting practices in order to identify and eliminate discrimination and promote pay equity in the Federal Government. Specifically, the Act provides for the establishment of an 11 member, bipartisan commission which would oversee the examination of the federal pay and job classification systems to determine consistency with Title VII (employment discrimination) of the Civil Rights Act of 1964 and Section 6(d) of the Fair Labor Standards Act. The study would review the job content of various occupations on the basis of skill, effort, responsibility and working conditions. The study would also analyze how human capital factors such as education, seniority, merit and locality contribute to rates of pay. At the end of the 18-month project, the Commission would provide recommendations for the elimination of any discriminatory practices and improvement of the pay and classifications systems of the Federal Government. H.R. 3008 was approved by the House

on October 9 by a vote of 259 to 162.

A companion bill, S. 519, was introduced by Senator Daniel Evans (R-WA.) on February 27, 1985 and referred to the Senate Governmental Affairs Committee. Hearings were held by the Subcommittee on Civil Service, Post Office and General Services, but no action has been taken on the bill.

CIVIL RIGHTS RESTORATION ACT STALLED BY ABORTION AMENDMENT

The Civil Rights Restoration Act of 1985 (H.R. 700/S. 431) which would restore full coverage to the four major civil rights statutes that require that federal funds not be used to subsidize discrimination is stalled in the House. The delay stems from amendments which would repeal long-standing regulations protecting students and employees against discrimination in education programs if they choose to have an abortion, and would extend exemption from Title IX coverage to religiously "affiliated" schools. Both amendments were added in close votes by the House Education and Labor Committee. The House Judiciary Committee reported out a pure restoration bill i.e., one that simply restores the coverage that existed prior to the Supreme Court's decision in Grove City v. Bell, ___U.S.___, 104 S. Ct. 1211 (1984). The U.S. Catholic Conference, long a strong civil rights advocate, has made the amendments, particularly the anti-abortion amendment, a condition for support of the legislation. The Leadership Conference on Civil Rights continues to hold firm on its position that the bill should simply restore the civil rights statutes, and any amendments that change substantive law are unacceptable. In a September 17, 1985 letter to Bishop James W. Malone, President of the National Catholic Conference of Bishops, the Executive Committee of LCCR requested a meeting with Bishop Malone and members of his board. The letter stated:

> Regrettably, several amendments supported by the Catholic Conference have placed the enactment of the Civil Rights Restoration Act ... in serious jeopardy ... If these substantive amendments pass, they will seriously undermine the principle of restoration. One cannot overstate the importance of the restoration principle. It is not only the sole purpose of the legislation, but it is also the glue that holds it together. If it is violated, the entire bill could unravel and die.

Bishop Malone has declined to meet with the executive committee of LCCR.

In the Senate, the Committee on Labor and Human Resources has held two days of hearings on the legislation as it relates to religious freedom and private education. As the CIVIL RIGHTS MONITOR went to press, the committee which is chaired by Orrin Hatch (R-UT.) had not scheduled additional hearings or a committee mark-up.

From The LCCR Task Forces...

The Education Task Force in correspondence with members of the House Education and Labor Committee expressed strong support for the Higher Education Reauthorization Act of 1985, and offered comments on various provisions of the Act. Particular concern was expressed for the special needs of part-time students who are more likely to be female and older than the traditional college-age population. The task force called for better production and dissemination of student aid and other educational information with special outreach to non-traditional students. Expansion of support to historically black institutions, as well as other institutions which serve large numbers of low income and minority students was advocated. Copies of the comments are available from the LC Education Fund for the cost of duplication and postage ($1.00).

The Employment Task Force through its co-chair Claudia Withers has been actively monitoring the Administration's efforts to gut the executive order on affirmative action. These activities are highlighted in our lead story including Ms. Withers testimony before the House Subcommittee on Employment Opportunities. Judith Lichtman and Claudia Withers both of the Women's Legal Defense Fund, along with representatives of approximately 15 other civil rights organizations

met with Secretary of Labor William Brock to express deep concern over the proposed revision of Executive Order 11246. The meeting was described by many who attended as a substantive opportunity to present the legal, political, and social arguments for the current Executive Order.

The Housing Task Force is focusing its efforts on the Fair Housing Act of 1985, a draft of which is available for comments from Marion Morris of Senator Charles Mathias' staff (387 Russell Senate Office Building, Washington, D.C. 20510). The bill which is scheduled to be introduced in late November provides an additional means -- as an alternative to court suits -- to redress housing discrimination complaints. By establishing an administrative enforcement procedure, similiar to the procedure used by 28 other federal agencies and departments, a mechanism for a speedy, fair and inexpensive decision process for all parties will exist. Further, the bill broadens the classes of persons protected from discriminatory practices to include handicapped persons and families with children. The bill would permit reasonable modification to a rental apartment or house, at the renter's expense, to make the unit accessible to persons with handicaps. The task force is collecting data on incidents of discrimination against the new protected classes. Anyone wishing to share such data should contact Glenda Sloane, Chairperson of the Task Force, at the Center for National Policy Review, 1025 Vermont Ave., N.W., Suite 360, Washington, D.C. 20005.

The Women's Task Force is working on a number of issues including the Parental Leave and Disability Act which is highlighted on pages 8-9. The Tax Coalition continues to push for tax reform initiatives which address the special needs of women. Such provisions would include increasing the Earned Income Tax Credit for low income families with children, and making the zero bracket amount for heads of households (the vast majority of whom are women) the same as that for married couples. Persons wanting additional information should contact either Maxine Forman, WEAL, 1250 "I" Street, N.W., Washington, D.C. 20005 or Duffy Campbell, NWLC, 1616 P Street, N.W., Washington, D.C. 20036. The Insurance Coalition is monitoring activities in states concerning gender neutral insurance. On October 1, 1985, Montana became the first state to implement legislation requiring that premiums and benefits for all forms of insurance be gender neutral. The coalition has prepared a State Insurance Action Package with information on what you can do to encourage passage of gender-free insurance in your state. For further information, contact Anne Smucker at WEAL (see address above). The Pension Coalition continues to plan for its Pension Awareness Week, March 17-21, 1986, to inform persons about pension rights and encourage them to inquire about their pension rights. Amy Shannon is the coordinator for the PAW and can be reached at 932 Dupont Circle Building, Washington, D.C. 20036, (202) 296-3778.

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FOR LCCR'S ANNUAL MEETING

May 5 and 6, 1986

in Washington, D.C.

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The CIVIL RIGHTS MONITOR is published by the Leadership Conference Education Fund, Inc., the education arm of the Leadership Conference on Civil Rights. Items presented in the MONITOR are not to be construed as necessarily reflecting the views of the LC Education Fund or the LCCR. Legislative updates are for educational purposes and are not meant to suggest endorsement of any legislation. Subscriptions are available for $20.00 a year (October - September).